

UTAH

AIR QUALITY BOARD

Meeting
April 13, 2005



Department of Environmental Quality
Division of Air Quality



State of Utah

Department of
Environmental Quality

Dianne R. Nielson, Ph.D.
Executive Director

DIVISION OF AIR QUALITY
Richard W. Sprout
Director

Air Quality Board
John M. Veranth, *Chair*
Ernest E. Wessman, *Vice-Chair*
Jerry D. Grover
Scott Hirschi
James R. Horrocks
Dianne R. Nielson
Richard R. Olson
Wayne M. Samuelson
JoAnn B. Scghini
Marcelle Shoop
Jeffery K. Utley
Richard W. Sprout,
Executive Secretary

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

DAQ-023-05

UTAH AIR QUALITY BOARD MEETING

FINAL AGENDA

Wednesday, April 13, 2005
1:00 p.m.

168 North 1950 West (Bldg #2) Room 101

- I. Call to Order
- II. Date of the Next Air Quality Board Meeting: May 4, 2005, 1:30 p.m.
- III. Approval of the Minutes of March 9, 2005, Board Meeting.
- IV. Final Adoption: R307-210. Incorporation by Reference, 40 CFR Part 60, Standards of performance for new Stationary Sources (NSPS.) (Rusty Ruby)
- V. Propose for Public Comment: Amend R307-101-2 to Update the Definition of Volatile Organic Compounds. (Jan Miller)
- VI. Appeal Of Sevier Power Company Permit And Appeal Of IPP Unit 3 Permit. (Fred Nelson)
 1. Sierra Club and Grand Canyon Trust
 2. Sevier County Citizens for Clean Air and Water
 3. Millard County Commission
 4. PacifiCorp
 5. Intermountain Power Project
 6. Sevier Power Company
 7. Executive Secretary
- VII. Information Items
 - A. Compliance: (Jeff Dean)
 - B. HAPS Compliance: (Bob Ford)
 - C. Monitoring: (Bob Dalley)



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For {

MINUTES

UTAH AIR QUALITY BOARD MEETING
April 13, 2005
MINUTES

I. Call to Order.

John Veranth called the meeting to order at 1:35 p.m.

Board members present:

Jerry Grover	Richard Olson	John Veranth
Jim Horrocks	Marcelle Shoop	Jeff Utley
Dianne Nielson		Ernest Wessman
Executive Secretary:	Richard W. Sprott	

II. Next Meeting.

After discussion, Board members would be polled on whether May 4, or May 11, would be best for the next Board meeting. Tentatively the Board would set June 1 and July 6 for future meetings.

III. Approval of the Minutes of March 9, 2005, Board Meeting.

Correction on page 3, third paragraph beginning with Jim Horrocks: change the sentence to read: One alternative vs. two alternatives would create confusion. Ernie Wessmen moved for approval and Richard Olson seconded. The Board approved unanimously.

IV. Final Adoption: R307-210. Incorporation by Reference, 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS.) Presented by: Rusty Ruby.

No one attended the public hearing and there were no public comments received. Therefore staff recommends approval of the proposed adoption. Jerry Grover moved for approval and Jeff Utley seconded. The Board approved unanimously.

V. Propose for Public Comment: Amend R307-101-2 to Update the Definition of Volatile Organic Compounds. Presented by: Jan Miller.

Ms. Miller explained that the federal definition for volatile organic compounds had been amended, and following those guidelines, Utah was following suit. Last November, EPA published two notices exempting five compounds from the definition of VOC. Staff recommends that the revision of Utah's definition of VOC be proposed for public comment.

There was a lengthy discussion concerning TBAC emissions as a separate reporting category referred to in paragraph five of EPA's notice. Paragraph five states in 40 CFR 51.100(s)(5): The following compounds are VOC for purposes of all recordkeeping,

emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

Staff had decided to incorporate the change in definition, but not change how the inventory was being done.

- Ernie Wessmen moved that the Board Propose for Public Comment: Amend R307-101-2 to Update the Definition of Volatile Organic Compounds and that staff address the reporting issue by requesting that when the proposal is posted, there will be no reference to paragraph 5 and that staff proceed to develop another proposal for public comment to submit to the Board at a later date.

Marcelle Shoop seconded the motion and amend it to clarify that the notice include the fact that paragraph 5 will be addressed in a subsequent rule making. The Board approved unanimously.

VI. Appeal Of Sevier Power Company Permit And Appeal Of IPP Unit 3 Permit.
Presented by: Fred Nelson.

John Veranth introduced Fred Nelson from the Attorney General's office. Mr. Nelson introduced the parties who were petitioning for standing on the two power plants permit actions. Mr. Wessman recused himself from the entire agenda item. Transcript of this action item is attached. The motions for this item are included below.

- Dianne Nielson moved that the Board consider the Sevier Citizens petition first and then address the Sierra Club and Grand Canyon Trust petition.

Richard Olson seconded. Those in favor: Jim Horrocks, Richard Olson, Dianne Nielson, Marcelle Shoop, and Jeff Utley. Opposed: Jerry Grover. John Veranth did not vote. The motion carried.

- Dianne Nielson moved that the Board grant standing to the Sevier County Citizens for Clean Air and Water with regard to the Sevier Power Plant permit appeal.

Richard Olson seconded. Those of the Board voting for: Jeff Utley, Jim Horrocks, Dianne Nielson, Richard Olson, and Marcelle Shoop. Opposed: Jerry Grover. John Veranth did not vote. The motion carried.

- Dianne Nielson moved that Sierra Club and Grand Canyon Trust not be granted standing with regard to the Sevier Power Plant permit appeal.

Richard Olson seconded. Those of the Board voting for: Jerry Grover, Jim Horrocks, Dianne Nielson, Richard Olson, and Jeff Utley. Opposed: Marcelle Shoop. John Veranth did not vote. The motion carried.

- Marcelle Shoop moved that the Sierra Club and Grand Canyon Trust not be granted standing in the matter of IPP Unit 3.
Richard Olson seconded. Those of the Board voting for: Jerry Grover, Jim Horrocks, Richard Olson, and Marcelle Shoop. Opposed: Dianne Nielson, Jeff Utley. John Veranth did not vote. The motion carried.
- Mr. Nelson stated that the issues that IPP and PacifiCorp had concerning the IPP Unit 3 would not be heard due to the fact that the Sierra Club and Grand Canyon Trust had been denied standing.
- Dianne Nielson moved that PacifiCorp be granted standing to intervene in regard to the Sevier Power Plant.

Jeff Utley seconded. Those of the Board voting for: Jerry Grover, Jim Horrocks, and Jeff Utley. Opposed: Dianne Nielson, Richard Olson and Marcelle Shoop. John Veranth voted opposed to break the tie.

- Ms. Shoop moved that PacifiCorp be allowed the opportunity to file an amicus in this matter.

Jerry Grover second. The Board approved unanimously. Motion carried.

- Dianne Nielson moved that the Sierra Club and Grand Canyon Trust be granted to file an amicus in the Sevier Power Plant matter.

Marcelle Shoop seconded. Those of the Board voting for: Jerry Grover, Jim Horrocks, Dianne Nielson, Marcelle Shoop, and Jeff Utley. Abstain: Richard Olson. John Veranth did not vote. Motion carried.

Complete transcript of Item VI. Can be purchased from:
Intermountain Court Reporters, (Att: Linda Smurthwaite) 5885 Holstein Way, Murray,
Utah 84107, (801) 263-1396.

VII. Informational items.

Due to time restraints, the informational items were not discussed.

Meeting adjourned 4:07 pm.

Page 2

Page 4

1 VI. APPEAL OF SEVIER POWER COMPANY PERMIT AND APPEAL
2 OF IPP UNIT 3.

3 MR. VERANTH: Now, to the big item, and I do need to
4 announce that we have several board members who need to
5 leave by 3:15, a couple by 4:00, so we are going to be
6 pretty strict about the time limits and try to keep this
7 fairly complicated process moving along.

8 I do thank the attorneys for some very clear
9 writing, and I'll admit, a little boring at times, but
10 they were well written and I think most of the board
11 members are prepared to listen to briefing and then
12 start discussing this.

13 So, Fred, would you like to open this?

14 MR. WESSMAN: Mr. Chairman, before the discussion
15 starts, I am recusing myself because I'm an officer of
16 PacifiCorp.

17 MR. VERANTH: Okay, and I have submitted through Fred
18 Nelson a disclosure of all my interests related to coal
19 fired power plants. I believe that has been distributed
20 to the attorneys. I will state again on the record that
21 I do not believe I have any conflicts of interest that
22 would keep me from being fair and impartial in this
23 matter.

24 MS. SHOOP: Mr. Chairman, I would just like to add
25 something for the record on that point, that as long as

1 knows, I have been involved in the rule making drafting
2 for a proposed excess emissions rule and malfunction
3 rule, and during the process, I was not involved with
4 the IPP permit, drafting the language that's in the
5 permit, but I did have a couple of discussions with Rick
6 Sprott with respect to the proposed rule and the
7 drafting of the excess emissions rule.

8 If, at any time, that becomes an issue with respect
9 to the parties, I would be more than happy to recuse
10 myself from the process, but I wanted to make sure that
11 I put that on the record that I had been involved in
12 those discussions. Again, I was not involved in
13 drafting of language of the permit but I did have some
14 discussions with Rick Sprott.

15 MS. SHOOP: Mr. Chairman, I probably have one more
16 disclosure, to the extent that it's relevant, and that
17 is some of our sister companies do produce coal and we
18 do mine and sell coal to coal fired power plants.

19 MR. VERANTH: All right.

20 MR. NELSON: Let me -- let me just define, I proposed
21 to the board that with respect to the matter -- matters
22 to be considered today, I would caution the board that
23 this is not a hearing on the merits of this case.

24 You did have in your packet the petitions that were
25 filed. They are there for the purpose of you seeing

Page 3

Page 5

1 we're disclosing our relationships to coal fired power
2 plants, I am employed by Kemecott Utah Copper
3 Corporation, which also operates a coal fired power
4 plant during part of the year and so, however, I do not
5 think that that will affect my ability to be impartial
6 in this matter.

7 MR. OLSON: Mr. Chairman, may I make a comment? Mr.
8 Chairman, I appreciate your lengthy disclosure, it was
9 interesting and I commend you for sending that out, and
10 after reading it, I would be in agreement that I feel
11 that you could be fair and impartial.

12 MR. VERANTH: Any other disclosures?

13 MR. NELSON: Just with respect to that matter, did
14 any of the participants today have any comments or
15 issues? I tried to mail a copy of that disclosure by
16 Mr. Veranth. All the parties, I assume they all got
17 one. Were there any issues that anyone wanted to
18 comment on that?

19 While we're doing disclosures, I have one I need to
20 make. As part of the petition by the Sierra Club, there
21 is an issue raised with respect to the excess emissions
22 provisions in the IPP permit and also Intermountain
23 Power Project has filed separately a request for review
24 of the permit with respect to that provision.

25 I need to indicate that, as you know, as the board

1 those and evaluating them with respect to the
2 determination of whether to grant intervention to the
3 participants.

4 The issues today will be specifically on whether to
5 grant intervention to those who petitioned. The
6 schedule that I proposed for the board was that each of
7 the parties be given 10 minutes and those who are
8 petitioning be given 10 minutes.

9 I have had a request from the Sierra Club and also
10 from PacifiCorp that they would like to reserve part of
11 their time to give a short rebuttal, that's normal,
12 accepted procedure. Because they are the petitioning
13 the party, they would go first and they would have an
14 opportunity to give a short rebuttal, so if they would
15 indicate the amount of time they would like to use for
16 rebuttal.

17 What I -- what I proposed to the board was simply my
18 proposal. If the board has any comments on how they
19 want to handle the matter differently from what was in
20 my memo, we can make some adjustments.

21 MR. GROVER: Just one question, Fred. Were you
22 wanting us -- it wasn't clear in the memo -- to handle
23 each one of them individually, to handle the IPP one
24 first, have a vote on that and then do the second?

25 MR. NELSON: No, because the -- because there are

1 similar issues with respect to the petition of
2 PacifiCorp, for example, in both proceedings and the
3 Sierra Club in both proceedings, my suggestion is to
4 hear them initially on all the issues and then have the
5 board discuss and then go through each of the motions
6 and vote, so you would hear the description.

7 You should have received a packet that looks like
8 this, it has a blue binder, a gray binder and a purple
9 binder, and that contains all the pleadings that you're
10 involved with and it would be considered today.

11 Knowing that attorneys are very careful in making
12 sure they don't go over time, I thought I would keep
13 track, and once you've used your time, I'll go like this
14 as an incentive, that's what the courts tend to do, and
15 in order to stick to the schedule in hearing this. So I
16 don't have any other comments. Unless the board has
17 something, we're ready to go forward.

18 MR. VERANTH: Any comments from the board?

19 MR. HORROCKS: A question for Fred and you may be
20 doing this later, so you don't need to answer it now.
21 There were -- there were two responses to -- to the
22 state's position and no follow-up response to those
23 responses. Does that make sense? And will you before
24 the day's out be addressing those replies?

25 MR. NELSON: I won't but perhaps the Executive

1 Secretary. The way this will work is I am counsel to
2 the board and Mr. Rathbun and Stephens are counsel to
3 the Executive Secretary and they would be the
4 appropriate ones to respond or to respond to any
5 questions you may have with respect to that.

6 MS. SHOOP: In that regard, do you want us to hold
7 the questions until everyone's done?

8 MR. NELSON: That's up to the board.

9 MR. VERANTH: I would suggest that that would move
10 things along and then we could call people back up if we
11 have specific questions for specific people. Would that
12 be acceptable?

13 All right then, I think we'll start by recognizing
14 the attorneys for the Sierra Club and Grand Canyon
15 Trust.

16 Joro?

17 MS. WALKER: If it's okay, Fred, I'm going to adopt
18 the flexible approach, which is I'm going to reserve
19 whatever time I have left for rebuttal, so is that all
20 right?

21 MR. NELSON: That's fine.

22 MS. WALKER: Good afternoon, as I said, I'm Joro
23 Walker, the attorney with Western Source Advocates
24 representing the Utah chapter of the Sierra Club and the
25 Grand Canyon Trust, and for simplicity's sake, I'm going

1 to refer to both organizations as the Sierra Club.

2 First of all, the Sierra Club would like to thank
3 you for your service to the state by participating on
4 this board and presiding over this hearing.

5 There are several important issues before this board
6 today and they deal with the adequacy, the legal
7 adequacy, of two permits approved by the Division of Air
8 Quality, DAQ. Those permits are for the IPP facility
9 and the SPC facility.

10 The first question is whether Sierra Club is
11 entitled to come before this board and ask it to review
12 two permits and determine if DAQ followed the law when
13 it approved those permits. Said another way in
14 legalese, the question is whether Sierra Club has
15 standing to bring its appeal before this board and
16 whether it's entitled to intervene, and I think the
17 question is undoubtedly yes. The answer to the
18 question, I'm sorry, is undoubtedly yes, the members of
19 Sierra Club have established that they have a personal
20 stake in this proceeding.

21 These members live and work and visit and recreate
22 in the very places that will be affected by the
23 construction and operation of the two facilities, places
24 like Sigurd, Salina, Delta, Boulder, Capital Reef, the
25 West Desert, Canyon Lands and so on; moreover, by virtue

1 of working, living, visiting and recreating in these
2 places, these members will be impacted by the proposed
3 facility.

4 No one disputes that the construction and operation
5 of these facilities will lead to significant new
6 emissions, including hazardous air pollutants. Tons and
7 tons per year of pollutants like carbon monoxide,
8 nitrogen oxides, sulfur dioxide, PM10 and volatile
9 organic compounds and mercury will be released as a
10 result of construction and operation of these
11 facilities. These emissions will impact members' lives
12 in every way.

13 As the members have set forth in their affidavits
14 and declarations, they believe emissions will affect the
15 health -- their health, the health of their families,
16 their ability to make a living, their property values
17 and their ability to enjoy and recreate in the places
18 they love. This is a personal stake and these are real
19 injuries; moreover, these members have come to the right
20 place. They are properly asking this board to review
21 the two permits. What they want is what the law
22 requires. They want to make sure that the two permits
23 comply strictly with the laws that are meant to protect
24 their health, the health of their families, their
25 ability to make a livelihood, their property values and

1 the places they love; moreover, they've shown a deep
2 personal stake in this matter by participating at every
3 level.

4 The Sierra Club has submitted on behalf of its
5 members detailed comments in advance of the public
6 comment period, at the public hearings in both
7 locations, during the comment period on the intent to
8 approve and twice during the reopening of the comment
9 period; thus, Sierra Club members are exactly the type
10 of citizens that under Utah law are entitled and even
11 encouraged to ask this board to do what it was set up to
12 do and that is to provide an independent review of the
13 decision by DAQ to allow the construction and operation
14 of the two facilities.

15 And, finally, the state has not opposed the Sierra
16 Club's ability to initiate this appeal or this review.
17 The state does not argue at this time that the Sierra
18 Club does not have standing and did not oppose the
19 petition to intervene, so the Sierra Club has
20 established its standing and right to initiate both
21 actions. And unless the board has questions, I'll move
22 on to other questions that are now before the board, but
23 you're holding your questions for later, so.

24 The second question before the board is whether
25 PacifiCorp has standing to intervene in this action, and

1 here, again, we're in agreement with the state and the
2 answer to that question is no. As PacifiCorp says again
3 and again it's not interested in the permits before this
4 board, it's not interested in the IPP and the SPC
5 permit. It's interested in its own permits; therefore,
6 it doesn't have a personal stake in the proceeding
7 before this board; moreover, its participation will
8 cause confusion in what's already a very complicated
9 matter, two matters actually, and will change the focus
10 improperly from what should be before this board, which
11 is the legal adequacy of the two permits to issue at
12 other facilities and proposed modifications at other
13 facilities and other existing facilities, including
14 those owned by PacifiCorp.

15 And, finally, PacifiCorp underscored the fact that
16 it doesn't have a personal stake in this proceeding by
17 not participating in the public processes that led up to
18 this appeal. PacifiCorp has not cited any participation
19 in the permitting process for the SPC or IPP permits.
20 This casts further doubt on any interest or stake that
21 it has in the proceedings; moreover, that PacifiCorp
22 hasn't constructed its participation in this process in
23 a meaningful way or alerted this board or anybody else
24 as to its concern until this last minute effort to
25 sidetrack this proceeding; therefore, our Sierra Club

1 the Sierra Club has gone through quite a lengthy list of
2 detailed comments and appeal points that it has made
3 with regard to two and three; thus, the Millard County
4 Commission cannot be the most appropriate plaintiff and
5 cannot take the place of the Sierra Club to seek this
6 board's review of the challenged permit.

7 Okay, I have two minutes left. Thank you.

8 MR. VERANTH: Thank you, Joro.

9 All right, I guess we next recognize the
10 representatives for Sevier County Citizens for Clean Air
11 and Water. Will please state your names in affiliation
12 for the record and then we'll start your time.

13 MR. CANNON: Yes, my name is James Cannon. I'm
14 president of the Sevier County Citizens for Clean Air
15 and Water.

16 MS. ROBERTS: My name is Cindy Roberts.

17 MR. CANNON: Members of the Air Quality Board, worthy
18 opponents, citizens of the State of Utah, thank you very
19 much for this chance to express our concerns over
20 building a coal fired power plant by Nevco, LLC, in
21 Sevier County.

22 The first word about this project was in May of 2001
23 when the Sevier County Commission held a press
24 conference confirming Nevco's interests. I attended
25 that conference confirming Nevco's request.

1 Commissioner Gary Mason opened the meeting with these
2 words: "Boy, have we got good news for you." That
3 sounded like a done deal from the very beginning. From
4 there I wrote a letter to the editor of the local
5 newspaper. I was contacted by Ms. Cindy Roberts and we
6 formed the Sevier County Citizens for Clean Air and
7 Water. From that eager starting point until now, we
8 represent Sevier citizens that number in the thousands.
9 We have a fully functioning office, dedicated board of
10 directors working daily to educate the citizens of
11 Sevier County on information available on coal fired
12 power plants.

13 In this day of the internet, lots of information can
14 be obtained and passed on quickly. We are here today to
15 reaffirm our request to intervene and have standing in
16 the matter of the Sevier Power Company approval order to
17 build a 270 megawatt coal fired power plant in Sevier
18 County.

19 The road to this point has been trying and sometimes
20 difficult. We are not attorneys and we thank everyone
21 for your patience in dealing with this matter.

22 Sevier County Citizens for Clean Air and Water has
23 demonstrated the right to intervene and have standing.
24 Sevier citizens have met the three general requirements
25 of Utah courts for standing. Eleven affidavits have

1 and were granted a public hearing in Richfield. To our
2 knowledge, more letters of protest were sent to Air
3 Quality than any other project in past history. Many of
4 our members were not used to speaking out against
5 projects being promoted by local politicians, so their
6 comments didn't always hit the mark, but they got the
7 point across.

8 We asked questions during the process, received few
9 answers that satisfied us. During this period, we have
10 learned much and strengthened our resolve. The more we
11 studied, the more questions we came up with, so here we
12 are, asking you for two things. The first is to dismiss
13 PacifiCorp's petition to intervene and have standing in
14 the appeal of the Sevier Power Company approval order.
15 We agree with counsel for the Executive Secretary that,
16 quote: "One, PacifiCorp has alleged no legal interest
17 that may be substantially affected by the proceedings;
18 and, two, PacifiCorp's participation as a party would
19 materially impair the orderly and prompt conduct of
20 these proceedings," end quote.

21 Two examples can be shown to demonstrate the
22 confusion already attributed to this action. I point
23 out these two examples not to point a finger but to
24 illustrate how easy it is to confuse issues. When the
25 Executive Secretary responded to PacifiCorp's right to

1 been filed and 477 signatures were gathered with little
2 effort on our part.

3 I'd like to quote from one of our -- quote from a
4 response to the Executive Secretary, comments on our
5 right to intervene and have standing. Seth Halls, age
6 13, of Monroe, Utah, writes: "The people with asthma
7 will be affected severely by the pollution. Those who
8 do not have asthma, may not realize how bad it can be.
9 I repeat: People who do not have asthma, do not know
10 what it is like. In the past year, I've been diagnosed
11 with COPD. I can tell you that it has changed my life
12 totally. It's difficult at times, if not impossible,
13 just to walk a short distance."

14 We began to get some -- we began by trying to get
15 some answers to our questions. From the very beginning,
16 the finger pointing started. Our county commissioners
17 told us: "It's up to Air Quality." We contacted our
18 state representatives, they said: "It's a local
19 problem." Air Quality told us: "It's a local problem."
20 The truth of the matter is: It's everyone's problem.

21 From that point, we developed a plan. We contacted
22 an attorney for legal advice with the intention of
23 bringing our concerns to the Utah State court system.
24 During this period, we were advised to do our best to
25 resolve our concerns each step of the way. We asked for

1 intervene, in the introduction it refers to the Sevier
2 Power Company in Millard County, Utah. In the
3 certificate of service dated March 16th, 2005, from the
4 attorney for Millard County Commission, it shows we were
5 served as participants in IPP Unit 3 appeal. This is
6 only the beginning and already the water is becoming
7 murky.

8 In the interest of justice, we ask the Air Quality
9 Board to dismiss PacifiCorp's request to intervene and
10 have standing in the appeal of the Sevier Power Company
11 permit.

12 I would like to bring to your attention the map of
13 the proposed plant site in Sevier County, over here to
14 my left. With 181 homes within a mile and
15 three-quarters of this site, is it any wonder that
16 people are outraged? I'm sure anyone in this room would
17 react in the same manner if you were presented with a
18 coal fired plant in your front yard.

19 Within the last two weeks, I had a father of a child
20 come into the office. He told me -- he told me about
21 the number of times he has rushed his child to the
22 hospital due to asthma attacks. It's a very fearful
23 feeling when you cannot breathe.

24 In summary, we, the members of Sevier County
25 Citizens for Clean Air and Water, have demonstrated our

Page 22

1 shows that the health of our citizens is not being
2 affected. We have a lot better air quality there with
3 IPP than the Wasatch Front has anyway, so.
4 An interesting point is, is that the scientific
5 group of astrophysicists have come to Millard County and
6 for a year studied our air quality for the effects of
7 visibility with them hoping to put in a cosmic ray
8 experiment just west of IPP and all the data that they
9 developed and generated show that our air quality, as
10 far as visibility, is perfect for them and that they are
11 in the process of building a thirteen-million-dollar
12 project to monitor cosmic -- high energy cosmic rays as
13 they enter the atmosphere, and that's the University of
14 Utah, the University of Chicago and a group of
15 international scientists, which their data shows that
16 our air quality is very good or they would not put that
17 experiment there.
18 We feel that we do have standing and that we do have
19 probably the most to lose and to gain and that we --
20 that we are -- our citizens, 96 percent of our citizens,
21 approve the expansion of the IPA project as it was
22 appearing at the public hearing up in Delta.
23 I'm also a production agricultural farmer. I live
24 in direct vicinity of IPP, about six miles away. I have
25 a clear view of it and I have six children. My family

Page 23

1 lives there. I'm a fourth generation farmer and we feel
2 that the benefits of having IPP and the expansion far
3 outweigh any negative effect that it would have on the
4 community.
5 Thank you.
6 MR. VERANTH: Thanks very much.
7 Okay, next we'll recognize the representatives for
8 PacifiCorp. State your name for the record and then
9 we'll start.
10 MR. JENKINS: Good afternoon. My name is Mike
11 Jenkins. I'm assistant general counsel for PacifiCorp,
12 and PacifiCorp is before the board this afternoon and
13 through our pleadings seeking intervention as a party in
14 this matter, but I must state right up front we're
15 seeking intervention on a very limited number of issues;
16 in fact, of the 19 issues raised by the Sierra Club in
17 its appeal of the IPP permit, we're seeking intervention
18 on only three, and of the 18 issues raised in the SPC
19 project, we're seeking intervention on only two of those
20 issues, and so the implication that we've heard today
21 from representatives from the Sevier County Citizens
22 group and the Sierra Club that PacifiCorp's
23 participation will somehow confuse all of the issues and
24 confuse the process, is simply not true.
25 Our participation is intended to be and has been

Page 24

1 intended from the beginning to be very narrow and our
2 interests in regard to those three issues are very clear
3 and I'd like to spend just a few minutes to walk through
4 those.
5 And, Fred, if I've got any time left over after,
6 we'll reserve that, if that's okay.
7 The three issues that we're concerned about are
8 raised in the Sierra Club's petitions. First, whether
9 IGCC is to be considered as part of the back process.
10 Second, whether super critical boiler should be
11 considered as part of the back process, and that issue,
12 by the way, was raised only in the IPP appeal by the
13 Sierra Club, and, third, whether greenhouse gas
14 emissions should be considered as part of the air permit
15 process and whether it should be considered as part of
16 the back process. Those are the three issues that we
17 have an interest in and let me explain to you why we
18 believe that we have an interest that qualifies us as an
19 intervener and establishes standing, and let me say also
20 at the outset, we don't have an interest in any of the
21 other issues that the Sierra Club has raised. The other
22 16 or 15 issues -- and that's probably wrong -- but the
23 other issues, we don't have an interest in those. We
24 don't have a stake in those. We don't even have an
25 interest in whether the Sierra Club or others are

Page 25

1 granted intervention. Those aren't our issues. Our
2 issues are more narrow than that.
3 Now, the reason we have an interest in the three
4 issues that I mentioned is because deciding those issues
5 in favor of the Sierra Club, the Grand Canyon Trust,
6 will require a novel interpretation of existing state
7 rules; in fact, it will take a gigantic stretch of
8 existing state rules to reach the conclusion that the
9 Sierra Club and the Grand Canyon Trust would like to you
10 reach.
11 Board interpretations of this magnitude that apply
12 to one source, such as the IPP or the SPC project,
13 presumably will also apply to other sources, and so why
14 does PacifiCorp care? We care because we have currently
15 pending a notice of intent to receive an approval order
16 for a power project known as Hunter 4. Now, this notice
17 of intent relates to a 575 megawatt project, will be in
18 addition to our Hunter 4 station in Emery County.
19 As our part of our back analysis, which is submitted
20 with our permit application, we are proposing that we
21 install a scrubber, that we install low ox. burners and
22 a SCR and that we install a bag house, just like IPP 3
23 has proposed in theirs.
24 Now, we're not opposed to IGCC as a company. We're
25 not opposed to super critical boilers. We're not

1 legal right to intervene and have standing in the appeal
2 of the Sevier Power Company approval order. Our
3 petition and motions have answered any questions brought
4 forth by other parties in this appeal.

5 Thank you for listening and we're anxious to move
6 forward in this process.

7 MR. VERANTH: Thank you. I think you got a few
8 minutes left.

9 All right, next we will recognize Millard County
10 Commission's representatives. Again, please identify
11 yourself for the court reporter and then we'll start
12 your time.

13 MR. JACKSON: Thank you very much. My name is LeRay
14 Jackson. I'm the Millard County attorney. I've been
15 the Millard County attorney for 18 and-a-half years. I
16 want it clearly understood that we're not here as
17 lackeys or puppets for the Intermountain Power Project.
18 We've had a great relationship with them but we've had
19 some very contentious times over property valuation
20 issues.

21 The Intermountain Power Project is a very important
22 part of Millard County. It has been from 93 to 70
23 percent of our tax base, very important. We feel that
24 we have definitely the legal right to have standing as
25 an intervener in this case, that Millard County

1 commissioners are unanimous in our efforts to
2 intervene.

3 We do recognize that there's some environmental
4 impacts of the third unit, but there are already two
5 units in place. We're asking for the approval order to
6 remain in effect, and the original two units, when they
7 built them, they planned for three, they purchased
8 enough agricultural water for three, but there's only
9 two presently.

10 The commissioners have applied a balancing test.
11 They realize that there are environmental impacts. One
12 human body creates an impact on the environment, but
13 they feel a possible harm from the environmental impact
14 does not outweigh the potential benefits to the county.

15 Millard County we feel is the most appropriate party
16 with the greatest interest to represent the health,
17 environmental and economic interests of those living and
18 working and playing in the county.

19 The statutory duties of the county commissioners are
20 to provide and protect the health, welfare and safety
21 and mores of the citizens of the county. We
22 definitely feel because of this that the county has
23 standing as the most appropriate party. We feel that if
24 the approval order does not remain effective, that the
25 county will suffer distinct and palpable injury to the

1 county, to the economy of the county.

2 We appreciate the opportunity of being before this
3 honorable board. I'll let Commissioner Darren Smith,
4 who has been appointed to be the spokesperson for the
5 county commission take the rest of our time.

6 MR. SMITH: As Attorney Jackson has pointed out, my
7 name is Darren Smith. I'm a local elected official
8 representing the county commission today. As he stated,
9 our county commission by resolution is in full support
10 of the approval order to issue an air quality permit to
11 IPA for the expansion of Unit 3.

12 We feel, as a commission and as citizens of the
13 county, that we are one of the most interested parties,
14 that we have the most to lose or to gain. Based on the
15 commitments by the county attorney, he mentioned that
16 the property tax valuation in our county is very
17 dependent on IPA. Millard County is about 80 percent
18 owned by the federal and state government, and so our
19 residents are very dependent on any kind of tax relief
20 that we can generate through businesses and the -- I
21 think the issue of the property value in our county with
22 having IPA in our county relieves the tax burden of the
23 citizens and actually helps the value of our property.
24 Just with the speculation of IPP building a third unit,
25 the value of our property has already starting to

1 increase.

2 As was mentioned, Millard County, being a
3 subdivision of the State of Utah, our statutory
4 requirement is for the health, safety and welfare of our
5 citizens. The data that we've been able to put
6 together, based from the Utah State Health Department,
7 Utah inpatient hospital discharge database, states that
8 Millard County ranks -- and this data is based on the
9 last 10 years, 1992 to '03 -- that we ranked 12th in the
10 number of incidents that have to do with respiratory
11 issues in our county, which would indicate an air
12 quality problem. Our physicians have been monitoring
13 this and are very interested in looking at that for the
14 welfare of our citizens.

15 We ranked 12th among counties in the State of Utah,
16 and as to major issues that the discharge status or
17 citizens who had expired because of a respiratory issue,
18 we ranked 17th, and so it kind of shows that there is
19 really no issue with the health of our citizens because
20 the impact of IPP in our county, that we actually are no
21 better off or worse off than if it were not there.

22 The time that when there is an incident with a
23 respiratory problem, the days of average length of stay
24 in a hospital, Millard County is the third lowest in the
25 State of Utah and all data that we can put together

1 opposed to considering greenhouse gas emissions. In
2 fact, in another forums in our own resource planning, we
3 considered all three of those issues. The merits of
4 those are not the issue here. The issue is whether this
5 board should interpret its rules in a novel way, in a
6 way that's never been interpreted before, to require
7 IGCC, super critical boilers and greenhouse gas
8 emissions to be considered as part of the permit
9 process. PacifiCorp's position on that is no, the board
10 should not do that.

11 Let me just add a little bit more background about
12 our notice of intent. These were no small
13 undertakings. In fact, in the affidavit we filed with
14 our brief, we state that we spent approximately \$800,000
15 to file this notice of intent for our Hunter 4 facility,
16 it is over 300 pages in length, in addition to all of
17 the modeling that needs to be done, and we've made a
18 substantial investment in that, and so anything that
19 will impact our notice of intent that is pending right
20 now, such as the position is proposed by the Sierra Club
21 and the Grand Canyon Trust, establish a very significant
22 interest, which we believe establishes standing on these
23 limited issues in this matter.

24 In addition, we have an interest in the approval
25 order that will come as a result of our notice of

1 interpretation of existing state rules that it amounts
2 to a rule making by decision, and if PacifiCorp is not
3 allowed to participate in this rule making by decision,
4 we won't have a voice ever to help shape whether or not
5 IGCC, super critical boilers, greenhouse gas emissions
6 should be considered as part of the back process.

7 We didn't pick this forum. We would prefer not to
8 be in this forum to address these issues. We believe
9 these issues should be addressed as part of a rule
10 making procedure, but we're here. The issues have been
11 raised, the board needs to make a decision and we
12 believe our interest allows us to establish standing and
13 participate in these limited issues because they're
14 going to impact not just the permits before you but the
15 permits that will be coming next, and one of those is
16 ours.

17 Now, there was a lot of implication that somehow
18 PacifiCorp's participation would slow the process down
19 and confuse the issues, and I would suggest that that
20 simply won't be the case. As I mentioned, our
21 participation is intended to be very limited. We will
22 keep that participation to these three issues. We do
23 not need to bring into evidence or before the board the
24 specifics of our Hunter 4 proposal. We will focus
25 exclusively on these three issues and present argument

1 intent, which could be impacted again by how the board
2 determines the outcome of the issues raised by Sierra
3 Club and the Grand Canyon Trust, and we also have an
4 interest in our existing facilities in this state,
5 because the back definition, which the Sierra Club and
6 the Grand Canyon Trust urges, must include IGCC, super
7 critical boilers and greenhouse gas considerations,
8 applies not just to newly constructed units but also to
9 modifications made to existing units, and we have more
10 existing coal fired units in this state than any other,
11 and so we have an interest in that sense as well.

12 Now, when the board rules on issues, such as this,
13 it, in effect, can be -- arguably establishes precedent,
14 sometimes that's called stare decisis, and the board
15 then needs to follow its own precedent for the next
16 group that's before it. It can't make a decision, such
17 as IGCC is backed for IPP Unit 3 and not be expected to
18 make the same decision for all others that come before
19 it, and that's the reason why we're here. We expect to
20 have to face this issue and we expect that those that
21 might oppose our Hunter 4 facility will certainly rely
22 on a decision on this point in opposing our Hunter 4
23 facility on these same issues.

24 Another way to think about this, as we stated in our
25 brief, is de facto rule making. This is such a novel

1 and participate according to the process that the board
2 establishes, so with that, we'll reserve any time I've
3 got left over and thank you very much.

4 MR. NELSON: You have one minute.

5 MR. VERANTH: Next we'll recognize the representative
6 from Intermountain Power Project.

7 MR. HALEY: Good afternoon. My name is George
8 Haley. I'm with Holme, Roberts and Owen, representing
9 Intermountain Power. This is a matter of purely state
10 law. In the briefs filed by the Sierra Club, they rely
11 quite heavily on federal cases decided in other
12 jurisdictions. They really have no application at this
13 proceeding. It's a matter of purely Utah State law
14 governing Utah State procedures, and there is adequate
15 Utah State appellate law to guide your decision on
16 whether or not the Sierra Club has standing.

17 They argued, as you've heard just a few minutes ago,
18 is that what gives them standing is that their members
19 live, work, visit, recreate around the proposed third
20 unit of IPA. That's not enough. It's not enough under
21 Utah state law.

22 The Utah Supreme Court made it very clear that in
23 order to have standing to challenge an agency's action,
24 the proposed intervenor must show that they have
25 suffered some distinct and palpable injury. They've not

1 done that. That's the Council of Holladay City where
2 the Supreme Court states quite clearly the following on
3 standing requires the plaintiff must be able to show
4 that he has suffered some distinct and palpable injury
5 that gives him a personal stake in the outcome of a
6 legal dispute.

7 There's also another case that the Sierra Club
8 filed, which is what we call Sierra Club 1, where the
9 Utah Supreme Court, again, made it clear that you have
10 to suffer some distinct, palpable injury, and in that
11 case, the Utah Supreme Court held that -- I'm sorry, it
12 was the Utah Court of Appeals held it is not enough for
13 the Sierra Club to speculate that its members' interest
14 might at sometime in future be adversely affected by the
15 complainant's determination, Sierra Club must also show
16 that those interests are legally protected.

17 So you can't just have some vague notion of what
18 their members' belief as to what might happen in the
19 future, which is essentially what they've been arguing.
20 If you look at the affidavits closely that have been
21 filed in support of their petition, all of the claims of
22 injury are started off with "I believe" or "it may."
23 There's no scientific evidence. There's nothing that
24 would meet the minimum requirements of Utah law to meet
25 an evidentiary foundation. Someone's belief as to what

1 might happen in the future is the kind of generalized
2 grievance that was criticized by the Utah Supreme Court
3 in the Council of Holladay City case, that those kinds
4 of grievances, when you're dealing with more of a
5 sociological issue of what you believe are more
6 appropriate to the legislative branch.

7 And that's another important, I think, flow in the
8 argument, which is we participated in the process,
9 earlier in this process, therefore, it gives us standing
10 to challenge in court, that's not -- that's not
11 accurate. There are mechanisms where the Sierra Club
12 can have their input in the permit process, that is a
13 public hearing. They had that. They got to articulate
14 their concern and did so and that's appropriate. They
15 can write to their representative, their state senator,
16 that's all appropriate. If they want to change the
17 rule, that's all appropriate.

18 If they don't like coal fired power plants, the way
19 to deal with that is through the legislative process,
20 but if you want to come into this process to start
21 challenging whether or not the permit should be issued
22 or that DAQ had overstepped its bounds, you have to
23 demonstrate some palpable injury. A belief is not
24 enough or a concern is not enough. Good example would
25 be tax valuations. Mr. Jackson spoke about some

1 disputes that IPA and the county has had over the years
2 over valuations. My firm has done that work. If
3 someone doesn't like what the valuation of the IPA has
4 been given by the county and how that's affected the
5 taxes, they can't come into the valuation fight between
6 IPA and the county, they don't have standing. They
7 can't do it, even though they might be vehemently
8 opposed to it, even though they might be a property tax
9 holder in the county and even though that valuation may
10 affect their property taxes. Because they're not
11 directly affected, they don't have standing.

12 The other element that they've missed is there's got
13 to be causation between the agency action and the
14 injury. That the agency action causes that injury,
15 which is void in any of the papers that have been filed
16 by the Sierra Club. They have not established any link,
17 any causative link, between the approval of the petition
18 and any alleged injury, which again is fatal to their
19 procedure.

20 There is an exception to the typical requirement of
21 showing injury and that's the significant public concern
22 standard. The Sierra Club did not argue that in their
23 initial presentation, and I don't know if they've
24 abandoned it or if they're saving it for rebuttal, but
25 it was in their papers. I want to comment on that for a

1 moment. That is an exception to the rule and by meaning
2 an exception, a good example of that is the Sierra Club
3 2 Supreme Court decision, which dealt with the proposed
4 Tooele incinerator of nerve agents. In that case the
5 Supreme Court said you haven't argued any particularized
6 injury, but deadly nerve agents on the -- next to a
7 major metropolitan city is of such public concern that
8 we're going to recognize an exception to that. That is
9 of such significant public concern, that we're not going
10 to make you demonstrate a particularized injury.

11 So what I would say is really what this board's
12 decision is and really what it turns on is are you going
13 to require the Sierra Club to argue and articulate a
14 particularized injury? And if you are, I think that
15 it's clear that their papers have not done that. Or are
16 you going to recognize this exception that the issuing
17 of an air permit is of such a significant public concern
18 that you're going apply this exception? And that's
19 really I think where your decision comes down, which
20 within that speculum does the issuing of an air permit
21 fall? We, of course, would argue that it falls on the
22 area of -- I mean, there's 11 units of coal fired power
23 plants in this state operating right now.

24 The incremental increase of any emission from the
25 IPA unit to me is not anywhere near of the significant

1 public concern as the disposal of toxic nerve gas
2 agents, so a whole model of difference, and so it comes
3 down to kind of the final point I want to make, which is
4 the burden of proof. The intervenor for the Sierra Club
5 has the burden of proof to establish standing as a
6 matter of law. That's clear under Utah law. So if
7 you're sitting on the fence and you're trying to decide
8 which way to fall, the fact that you're sitting on the
9 fence demonstrates that the Sierra Club has not met
10 their burden of proof and that you should find against
11 their intervention, find that they do not have standing
12 and deny the petition.

13 Thank you.

14 MR. VERANTH: All right. Next we'll recognize the
15 representative from Sevier Power, Mr. Finlinson.

16 MR. FINLINSON: My name is Fred Finlinson and I
17 represent the Sevier Power Company. We appreciate the
18 difficult job that this board has, that the able
19 attorneys of the parties have relied on the same Utah
20 cases in their excellent briefs and come to different
21 conclusions. It makes me think that perhaps there are
22 two different versions of these cases that are out there
23 that we've been reviewing. You now have to decide who's
24 in and who's out.

25 The Sevier Power Company has applied for a permit

1 prove a direct interference with the water right
2 belonging to the conservancy district, they did not have
3 standing. They raised critical issues about forfeiture,
4 but because they couldn't show that direct evidence,
5 they were not allowed, and I think that's just one of
6 the classic cases that we talked about that takes a
7 fairly restrictive approach to standing.

8 Sevier Power hopes that the review of the October
9 12, '04, permit would not become a part of a national
10 fight against any more coal fired plants. We hope it
11 would focus on the issue of whether or not the Sevier
12 Power Corporation's proposed plan meets the existing
13 requirements of the Utah Clean Air Act, which do allow
14 coal fired generation plants to be heard.

15 The Grand Canyon Trust petition has an affidavit
16 from a member who happens to be a resident of Arizona,
17 who has a part time or a second home, I should say a
18 second home in Boulder, Utah, which is over 100 miles
19 away. That is their only tie to the Sevier Power
20 Project in Sevier County. We submit that that does not
21 meet the Utah case law requirements for standing.

22 The Sierra Club members happened -- that have filed
23 the affidavits, happen to live in Sevier County. Both
24 of them live within five miles of the proposed plant,
25 but these two members are also founding members of the

1 and the company's played by the rules. The process has
2 been long and expensive. They've submitted all of the
3 data requested by the division, and finally on October
4 12th, 2004, received the permit approval that is now in
5 question.

6 Now, five months later we're finally presenting oral
7 arguments about who has standing to protest or review
8 the October 12th, '04, approval order. We support the
9 board's review of that permit. We look forward to the
10 board's final approval of the permit. The issue of
11 standing of who has that ability to appeal is required
12 by your rule to be determined consistent with Utah case
13 law.

14 The Sevier Power Company has submitted that the Utah
15 case law is fairly restrictive about the granting of
16 standing, because in quoting one of those judges,
17 standing guards the gate to the courthouse. Most of the
18 cases cited by the Sierra Club that argued for a more
19 lenient standing, are federal cases.

20 Classic example of a Utah case was the Washington
21 County Water Conservancy Case, where the conservancy
22 district attempted to appeal a decision of another
23 applicant, and the court ruled not on the premise of
24 whether or not there was a rule on the standing issue
25 and said because the court -- the district could not

1 Sevier Citizens group and we raise the question to you:
2 How many groups can a resident join to qualify that
3 group for standing. One? Two? Three? Or even more?
4 If the Sherry and Howard affidavits that qualify with
5 the Sevier Citizens and they're not allowed to qualify
6 subsequent groups, then the Sierra Club and the Grand
7 Canyon Trust did not have local membership from Sevier
8 County and we submit that that fails to meet the Utah
9 case law requirements for standing.

10 The division, in their brief, suggested that the
11 Sierra Club and Grand Canyon Trust did not have
12 standing, but they wanted to hold on that issue until a
13 later day. We think the standing is a lot like Justice
14 Henroid's great line: "You can't be just a little bit
15 pregnant. You're either are or you're not." We think
16 now's the time to resolve the issue of standing.

17 If they don't have standing but are able to
18 participate in the hearing process for another period of
19 time, they enlarge the process and make it more
20 difficult, so we suggest that if they don't have
21 standing, now is the time to make that decision.

22 The Utah Power request has been a limited request
23 and they have refined that limitation. We believe, or
24 the company believes, that if the Sierra Club and the
25 Grand Canyon Trust have standing to raise those issues,

1 which they've identified in their petition, which have
2 been talked about here already, like the greenhouse
3 effect and coal gasification, if they are going to raise
4 those issues, then we think it's appropriate that
5 PacifiCorp have that opportunity to be there because
6 those issues will impact their application as well.

7 On the other hand, if the board concurs with the
8 petition submitted by our company that the citizens
9 don't have standing, nor do Grand Canyon Trust, we'd
10 encourage you not to grant standing to PacifiCorp and
11 that may resolve the matter right there on the permit.

12 So your challenge is really difficult. We encourage
13 you to look favorably on the positions we've presented
14 to you. We think it's probably more consistent with the
15 Utah law.

16 Thank you very much.

17 MR. VERANTH: All right, thank you.

18 And last we'll here from the representatives for the
19 Executive Secretary, Mr. Rathbun.

20 MR. RATHBUN: Thank you, Mr. Chairman. I'm Richard
21 Rathbun. This is Christian Stephens. We're both
22 assistant attorney generals and we represent the
23 Executive Secretary. And as we sit at this table, let
24 me make the point that in layman's terms I think what
25 the board is being asked to address today is a matter of

1 interest in these proceedings. If you look around the
2 room, even after an hour of legal argument, there's
3 still virtually a full room, many of them are members of
4 the parties or would-be parties, but I would submit
5 there are also other folks who are interested in air
6 quality generally, maybe members of the news media,
7 maybe folks who have other facilities that they think
8 may be impacted by rules and regulations that are coming
9 before the board sometime in the future.

10 So the real question is in these proceedings, which
11 as the Executive Secretary is very quick to point out,
12 we welcome the opportunity to defend the decisions of
13 the division with respect to the approval order for
14 these two facilities, but in doing so, you know, we have
15 to -- and I think the board has to keep in mind that
16 while we'll stand behind our work, the process has to be
17 an appropriate one so that the parties who sit at this
18 table and whose rights and legal obligations are being
19 determined by this board, and legally determined, not
20 just advisory, but you will be determining rights and
21 obligations of the facilities, the owners of the
22 facilities, as well as the program represented in the
23 person of Rick Sprott, the Executive Secretary.

24 Other folks who may have an interest generally but
25 legal rights and obligations are not being determined,

1 are normally not allowed as a party to proceedings like
2 this, so those two considerations, one, we're more than
3 happy and we value the public airing and the defense of
4 the decisions of the division and the comfort that it
5 gives to the public in seeing that the division's
6 decisions are overseen, but at the same time, protecting
7 the sanctity of the process and the parties, the right
8 to the parties who are properly before this board, are
9 the two primary points that we attempted to address on
10 behalf of the Executive Secretary in the pleadings that
11 we filed.

12 Then you get to the analysis of the legal gates or
13 hurdles that are in place to assure that the appropriate
14 parties are before the board; namely, the rules on
15 intervention and standing. I'm not going to go through
16 that, that's in our briefs.

17 I do have a couple of points to make before we wind
18 up, but I want to just jump right to bottom line here.
19 As you saw in the Executive Secretary's pleadings, the
20 Executive Secretary does not oppose the Sierra
21 Club/Grand Canyon Trust's standing. As a legal matter,
22 standing is jurisdictional, as we found in the Sierra
23 Club 1 court of appeals case. It can be raised at any
24 time, but we, the Executive Secretary, do not intent to
25 oppose the standing of those parties. We're perfectly

1 happy to go forward and defend the terms of the permit.
2 With respect to the Sevier County Citizens group,
3 their reply brought forth much more detail than they had
4 initially put forward, and, likewise, the Executive
5 Secretary does not oppose the Sevier County Citizens
6 group's participation. With one caveat, I would just
7 ask that the board remember that with all due respect to
8 the citizens group, it is a citizens group not
9 represented by counsel and we would just ask that
10 through these proceedings make sure that the citizens
11 group focuses on the issues and only the issues that are
12 presented in this case and not go astray, as is a
13 difficult thing for any pro se party.

14 With regard to the Millard County Commission, the
15 Executive Secretary pointed out the division sees the
16 legal deficiencies and the lack of adverse interest
17 expressed by the commission, and, furthermore, the
18 legitimate concerns or interest, if you will, of the
19 Millard County Commission are, for the greatest part,
20 not concerns that are really within the jurisdiction of
21 this board. Economic impacts, benefits, economic
22 benefits, that may -- tax revenues, for example, that
23 may befall the commission are not something that this
24 board will be determining or deciding. It is after all
25 the Air Quality Board. So we have to remember, that is,

1 the approval order terms, their legality, their
2 appropriateness, which are really going to be before
3 this board, and that without an adverse interest,
4 namely, the Millard County Commission supports the
5 decision made by the Executive Secretary, they do not
6 have sufficient standing to participate as a party. We
7 obviously welcome their support in the decision because
8 we think the Executive Secretary has made the right
9 decisions.

10 The county commission we, therefore, think does not
11 have appropriate grounds for intervention and we would
12 oppose their participation as a party, but the Executive
13 Secretary would not oppose the participation of the
14 county commission as an amicus curiae, which your rules
15 allow, R30710365, which you probably heard the term
16 literally means friend of the court, and typically the
17 conditions of participation as an amicus can be set by
18 the board, according to the rules, and they typically
19 are set by courts, at least, in limiting the party to
20 the filing of briefs and arguing legal issues but not to
21 discovery or presentation of testimony,
22 cross-examination of witnesses or other evidence. We
23 would not oppose that.

24 On the PacifiCorp intervention request, we set forth
25 our position on that. The PacifiCorp plants are not at

1 that's the result of the hearing, if that's a possible
2 result of this hearing as proposed is what they're
3 referring to I guess, a new interpretation of a rule,
4 even though this is a case-by-case determination and
5 would not necessarily be binding on other parties, we
6 acknowledge that an agency's interpretation of a policy,
7 you know, is hard to back away from. If you're going to
8 interpret it in a different way later, you have to be
9 able to explain it either by factual differences because
10 it's case by case or some other factors. It's not a new
11 concept. In fact, PacifiCorp cites a 40-year old law
12 article for the principles, which we don't dispute.
13 However, what PacifiCorp fails to mention is that this
14 is addressed by the Utah Rule Making Act, and I would
15 like to just point you to that because this was raised
16 in their reply brief and this is my only opportunity.

17 The Utah Rule Making Act, which is 63-46-A-1 and
18 following, defines rule, among other things, as a
19 written statement which implements a federal or state
20 policy and applies to a class of persons, not an to
21 individual, but to a class of persons. It does not
22 mean, and this is specifically from the statute, rulings
23 by an agency in adjudicatory proceedings, except it goes
24 on to say that if there are rulings in an adjudicatory
25 proceeding, such as the one before this board, which

1 issue here and, again, we don't think that there's
2 substantial legal interest that will be affected by this
3 proceeding because PacifiCorp in its approval order, the
4 Hunter 4 pending approval order application, is not
5 before this board, and by the statement of PacifiCorp's
6 representatives, you know, they don't intend to bring
7 that before this board because it's not properly brought
8 yet before the board in this adjudicative proceeding, so
9 we also oppose PacifiCorp's participation as a party.
10 We don't think it's appropriate under the intervention
11 rules. We don't think they have standing.

12 With respect to their participation though as an
13 amicus curiae, if that is the wish of the board, and I
14 think it was suggested in the pleadings by one of the
15 other parties, or one or more parties, we would not
16 oppose that. PacifiCorp would bring some expertise to
17 the table in the sense of briefing on legal issues and
18 it may benefit the board in that sense, but, again,
19 briefing and oral argument, but not participation as a
20 party because we don't think that their legal interests
21 will be determined here.

22 There is the issue though that was raised in their
23 reply brief and I want to address that briefly, and that
24 is the de facto rule making, and Mr. Jenkins mentioned
25 that as well. The new interpretation of a rule, if

1 announce new principles of law, you must go through a
2 rule making within 120 day, so the de facto rule making
3 concern is specifically addressed by the Utah Rule
4 Making Act, and then if you look at 63-46-A-3.5, and I
5 know you don't have it in front of you, but I'm giving
6 this for the record, it is the section entitled "Rules
7 Having the Effective Law," I'll quote: "An agency's
8 written statement is a rule if it conforms to the
9 definition of a rule under Section 2 but the written
10 statement is not enforceable unless it's made as a rule
11 in accordance with the requirements of this chapter."
12 In other words, it must be generally applicable
13 adjudicative proceedings, such as this one, that are
14 specifically excluded and it requires actual rule making
15 before it's generally applicable to other facilities,
16 such as PacifiCorp's future Hunter 4 facility.

17 I want to also mention that PacifiCorp in its reply,
18 it talked about the second standing test, which is more
19 the interested -- most interested party standing test
20 and point out that that's a two-prong test. Executive
21 Secretary did respond by saying it's not PacifiCorp's
22 fight, it's somebody else's facility, but PacifiCorp
23 also failed to mention that the second part of that test
24 is that you have to find that they would be more
25 appropriate plaintiff and the issues would not be raised

1 but for their presence. They don't argue that point
2 because obviously these issues would be raised by the
3 ones most at interest.

4 So in summary, we don't oppose the Sierra Club's
5 entry into this and the citizens group, and for the
6 Millard County Commission and PacifiCorp, we do oppose
7 them on the grounds stated but would not oppose their
8 entry as amicus or their participation as amicus.

9 MR. VERANTH: Thank you.

10 MR. RATHBUN: Again, Mr. Stephens and I would be
11 happy to answer any questions at the conclusion. I
12 think there's time for rebuttal.

13 MR. VERANTH: Okay. We have been going for about an
14 hour and-a-half now. I see people kind of fidgeting.
15 Do we want to go to the rebuttals immediately or adjourn
16 for like five minutes, let people put their thoughts
17 together and then we can reconvene?

18 MS. NIELSON: Mr. Chairman, I'm just a little bit
19 concerned about the time frame, if we're going to lose a
20 board member at 3:15, I'm inclined to want to go
21 forward.

22 MR. VERANTH: Let's go forward then with the
23 rebuttals.

24 MR. WESSMAN: The board member you lose is me.

25 MS. NIELSON: Oh, okay.

1 MR. WESSMAN: So that might not --

2 MS. NIELSON: That resolves -- could I ask -- I think
3 that answered that question.

4 MR. NELSON: You're going to lose Marcelle.

5 MS. SHOOP: At 3:30.

6 MS. NIELSON: Okay, I think that's close enough. I
7 guess I still have a concern unless --

8 MR. VERANTH: Let's proceed.

9 MR. NELSON: Two minutes for Sierra Club and Grand
10 Canyon Trust.

11 MR. VERANTH: Two minutes.

12 MS. WALKER: My name is Joro Walker, attorney for
13 Sierra Club and Grand Canyon Trust. Initially I think
14 we rely heavily on Utah law to show that we have
15 standing in this case. The two most important cases for
16 us are national parks, where the Supreme Court is the
17 final arbiter of Utah law, gave a park conservation
18 group standing to challenge a land swap on the basis of
19 concern for park values and Sierra Club 2, where Sierra
20 Club has standing to challenge a permit modification
21 for -- and trial burns for the weapon incinerator. In
22 either of those cases did anyone live presumably in the
23 national park or at the weapon depot, we would hope not,
24 and yet they had standing.

25 The issue of belief and concern is a red herring.

1 Belief only reiterates what members' opinions are and
2 that's exactly what an affidavit is about, is the
3 opinion of the person giving the affidavit, and it's not
4 really different if you said I believe that cutting
5 trees down around my favorite fishing hole will impact
6 me, is that any different from saying cutting trees
7 around my favorite fishing hole will impact me? I don't
8 think there's any different there.

9 And, finally, science backs up every single claim
10 that the members make, including deaths and asthma and
11 impacts to old people, impacts to soil and vegetation
12 and visibility that comes from air pollution. We also
13 carefully distinguished each of the cases relied on
14 either IPP or SPC in various footnotes and I refer you
15 to those if you're persuaded by the arguments they have
16 in relation to those cases. And this idea that public
17 interest test is an exception, I think is also
18 misleading. It's actually on equal footing with all the
19 others. This clearly is a matter of public concern. I
20 don't need to repeat that tons of air pollution that are
21 going to be emitted as a result of construction and the
22 operation of these facilities, and that I don't need to
23 recite again the documented health impacts that come
24 with those facilities.

25 MR. NELSON: Thank you.

1 MR. VERANTH: Those on behalf of Sevier Citizens,
2 state your name again and we'll start your time.

3 MR. CANNON: James Cannon, president of Sevier County
4 Citizens for Clean Air and Water. I only have one
5 comment to make for the record. Counsel for Nevco
6 indicated that Howard Sherry was a founding member and I
7 can tell you that he was not. He has attended some of
8 our meetings and he might consider himself a member but
9 he was not a founding member.

10 Thank you.

11 MR. VERANTH: Thank you.

12 MR. NELSON: Millard County Commission has three
13 minutes.

14 MR. VERANTH: Millard County Commission, okay, you're
15 declining?

16 MR. JACKSON: We have no further comment. Thank you.

17 MR. NELSON: PacifiCorp is next.

18 MR. VERANTH: PacifiCorp, one minute.

19 MR. JENKINS: Thank you, Mike Jenkins for
20 PacifiCorp. Just would like to read from a Supreme
21 Court decision. I appreciate it Mr. Rathbun quoting
22 from that Administrative Procedure Act. This is -- this
23 does not appear in our brief and so I'll cite it
24 formally for the record here. This is Salt Lake
25 Citizen's Congress versus Graham's Telephone and

1 Telegraph Company, 846 Pacific 2nd 12-45. Reading just
2 quickly here: "The doctrine of stare decisis," which we
3 talked about before being binding precedent, "properly
4 applied is an essential component in establishing the
5 rule of law in the area of administrative law.
6 Administrative agencies, like courts, have authority to
7 establish rules of law and they do so in two ways by
8 promulgating rules and by issuing decisions as a
9 necessary incidence of adjudication. Rules of law
10 developed in the context of agency adjudication are as
11 binding as those promulgated by agency rule making;
12 thus, rules of law established by adjudication apply to
13 the future conduct of all persons subject to the
14 jurisdiction of an administrative agency, unless and
15 until expressly altered by statute, rule or agency
16 decision."

17 PacifiCorp -- and this is quoting from the Utah
18 Supreme Court if I didn't mention that before, but
19 PacifiCorp submits that a decision on the three issues
20 we're concerned about here is arguably binding on
21 PacifiCorp and excluding it from participating in how
22 the decision is made would be patently unfair.

23 Thank you.

24 MR. VERANTH: Thank you. All right.

25 MR. NELSON: I believe the process at this point is

1 opportunity for intervention because the approval order
2 is modified? Do you understand what I'm saying?

3 MR. NELSON: Right. In other words, assuming you
4 grant intervention and you go through the process and
5 the board makes a decision to modify the permit, at that
6 point that resolves the issue. It doesn't start over.

7 MR. GROVER: So there's no way -- and what I'm saying
8 is that part of the concerns is that if somebody
9 intervenes, there's a modification, they don't have any
10 ability -- under your interpretations, they don't have
11 any ability to further intervene to contest that
12 approval order or modification?

13 MR. NELSON: Those who are participating in the
14 process, that's the identified legal process for
15 resolving those issues.

16 MR. VERANTH: I guess -- well, I think what Jerry's
17 asking you though, I think that would create a new
18 approval order, which then would have to go through the
19 approval order process and be subject to the same steps.

20 MR. NELSON: No, there has been an approval order
21 issued.

22 MR. GROVER: Right, I understand.

23 MR. NELSON: And so you are just deciding whether to
24 accept that approval order, reject that approval order
25 or modify the approval order based on this hearing.

1 for the board to ask questions, and then after you ask
2 questions, my suggestion is that you start with the
3 motions by the Sierra Club and Grand Canyon Trust and
4 the Sevier County Citizens, because if you -- if you
5 grant those motions, then you will need to make
6 decisions on the other motions. In you deny those
7 motions, some of the other decisions wouldn't need to be
8 made.

9 MS. NIELSON: Mr. Chairman, could I also clarify that
10 we're dealing with two different power plant proposals
11 here. Although, I appreciate there are some similar
12 issues in the petitions, I'm assuming the board will
13 also consider the petitioner's per standing separately
14 relative to the two power plants.

15 MR. VERANTH: I would propose that we make two
16 motions. We deal with one party at a time, but it would
17 be two separate motions, two separate votes for the
18 record.

19 MS. NIELSON: Okay, thank you.

20 MR. GROVER: Is it appropriate to ask our counsel
21 questions at this point?

22 MR. VERANTH: Yes.

23 MR. GROVER: I have a procedural question here. If
24 an intervention is granted and an approval order is
25 modified in any way, does that precipitate a new

1 MR. GROVER: Okay, but if we modify it, if we accept
2 one intervenor, modify it based on intervention, so it's
3 a different -- has different terms in it, it may give
4 rise to other -- you know, at least arguments of
5 palpable damage or whatever we want to call it, can they
6 contest the new elements?

7 MR. NELSON: Well, I think that depends on the
8 modification. It's pretty hard to decide that issue
9 without knowing the exact modification that you're --
10 you would be making. I think we have to deal with that
11 issue if we get to that point. If it's directly in
12 response to an issue that's been raised and it's a
13 resolution of that issue and it is in the context of
14 what the original permit was issued, that everybody had
15 a fair chance to comment on that or intervene on that
16 issue, then it wouldn't be available for further
17 consideration, but if it is something brand-new, all of
18 a sudden you say, okay, we're going -- we were looking
19 at A and we're going to substitute B in, which is a
20 completely different issue that the public hasn't had an
21 opportunity to weigh in on or comment on, you may have
22 an argument that that is a separate issue, which would
23 require you to go through the approval order process
24 again.

25 MR. GROVER: But if all intervenors are included in

1 some context, any change there, if they were a party in
2 the intervention, even if it was changed, they
3 don't -- they would not have additional standing is your
4 opinion?

5 MR. NELSON: No, they have raised issues which they
6 have asked you to resolve, and if those issues are
7 resolved in one way or another, this is their forum to
8 do that, that's what the law provides.

9 MR. GROVER: Okay.

10 MR. VERANTH: Dianne?

11 MS. NIELSON: I'd like to ask a question. I think
12 I'm concerned about something that the commissioners
13 also raised and I guess my question goes to the Sierra
14 Club but also to PacifiCorp. PacifiCorp has alleged
15 that there are -- that there may be ways in which of in
16 responding to Sierra Club's arguments, if they were
17 granted intervention, that a permit could be changed to
18 the effect that it would reestablish the way we looked
19 at that for power generation. I didn't hear a specific
20 answer I don't think in the filings I saw from Sierra
21 Club or in the discussions today and so I'd like to know
22 from PacifiCorp -- or, I'm sorry, from Sierra Club if
23 they believe that the board's action to resolve the
24 harms that they have identified would, in fact, change
25 the rule or set a precedent for how the division applies

1 that rule in the future, and if yes, why shouldn't
2 PacifiCorp be able to participate in this hearing as an
3 intervener?

4 MR. VERANTH: Joro?

5 MS. WALKER: Joro Walker. The question you ask is
6 essentially the question that plagues or informs all
7 legal decision making, which is that to a certain extent
8 any particular adjudicative body is held to its own
9 precedent, but on the other hand, there's always the
10 argument to be made that that precedent doesn't apply
11 here, and that's what the difficult questions in law are
12 all about, so there's no straight forward answer to what
13 you're asking. It's a balancing of those factors. It
14 always is. To what extent is a case or a previous
15 decision, to what extent does it bear on the decision
16 we're making here? To the extent that the situations
17 are identical, then that bearing is very strong. To the
18 extent to which the situations differ factually, they're
19 not. But if you're asking -- I mean, to a certain
20 extent, any ruling this board makes at any time impacts
21 every subsequent party that ever has any dealings with
22 the board subsequently. You know, presuming it doesn't
23 get change on by the courts, but that's the way it
24 works, and thankfully so or else it would malay, so
25 that's definitely true, but on the other hand, that

1 idea, which PacifiCorp calls stare decisis, does not
2 confer standing, because if it did, then in any
3 situation before the board, anyone who ever thought that
4 the decision the board was going to make in the future
5 would impact them, would, in theory, have standing to
6 participate, and I believe, as the your counsel
7 suggested, that may be the best way to deal with this
8 issue, and I think it would give district court what it
9 needed, would need to allow them to be an amicus or
10 amicus, which essentially is to say we want to put our
11 concerns before you and those concerns would be with the
12 three issues or the two issues that they cited
13 previously, but they're not a party but their concerns
14 are before you, and that may be the way to deal with
15 this whole issue of stare decisis, which is a common
16 tool used by the courts to deal with a similar issue;
17 for example, every time the United States Supreme Court
18 has an issue of significance, which, of course, is going
19 to impact the entire nation, not everyone has standing
20 to participate, but they except a lot of amicus briefs.

21 So is that responsive?

22 MS. NIELSON: Yes.

23 MS. WALKER: It's a tough issue.

24 MS. NIELSON: Mr. Chairman, if PacifiCorp --

25 MR. VERANTH: Yeah, I was going to say, PacifiCorp,

1 would you comment on this?

2 MR. JENKINS: Thank you very much, and I appreciate
3 Ms. Walker's remarks. It's a tough issue and it does
4 involve some balance, but we're not just some other
5 party out there that might be interested. We have an
6 NOI pending now. It is more similar to IPP 3 than
7 different; in fact, probably the only difference is the
8 number of megawatts. The back analysis that we had done
9 is very similar, as the board well understands, that's
10 required. We have to do a back analysis that considers
11 the one that came before us, and so we have, and so to
12 the extent the board makes a decision here that
13 re-interprets its existing rules, those re-interpreted
14 rules will apply to us and arguments will be made that
15 we have to do the very thing that the board has ordered
16 IPP or the SPC plant to do. That's not just anybody out
17 there. That's somebody next in line, next in line in
18 the process, and that somebody is us and the impact on
19 us is real and the interests we have are real, they're
20 imminent, they're immediate and they're substantial.

21 Does that respond to what you needed?

22 MS. NIELSON: Could I ask one follow-up?

23 MR. VERANTH: Yes.

24 MS. NIELSON: You applied that argument similarly in
25 conclusion anyway to both IPP and Sevier Power Plants.

1 MR. JENKINS: Right.

2 MS. NIELSON: And yet you're explaining that your

3 Hunter 4 plant is set for megawatts the same as IPP. Is

4 the argument as compelling for the Sevier Power Plant?

5 MR. JENKINS: It is as a matter of what we consider

6 to be threshold issues, because if the board

7 interprets -- in the case of the SPC project, if the

8 board interprets IGCC as back or it requires IGCC to be

9 considered during the back process, you do that based on

10 the rules, the very same rules that get applied to our

11 project, whether -- in our case, we're proposing a

12 conventional pulverized coal plant. In the case of SPC,

13 they're proposing circulated fluidized bed plant, and

14 although the technology is different, the rule that is

15 being applied is the same, and the issues that the

16 Sierra Club have raised are the same and the opportunity

17 for binding precedent on us is the same, and it's that

18 interest, and not just in NOI, but also as it applies

19 for our existing plants where we have to do the similar

20 back analyses, the impact on us is the same, and again

21 for the very limited issues is what we seek standing as

22 a party.

23 And if I could respond to the amicus suggestion,

24 that would be a nice, little compromise, except we don't

25 know yet the procedure that the board will set. We

1 don't know, for example, whether the board is going to

2 receive evidence, going to receive testimony, going to

3 receive witnesses on these three narrow issues that

4 PacifiCorp has identified, and so we need to maintain

5 our ability to act as a party so that we can have full

6 participation, depending, again, on how the board

7 decides to handle those issues. Now, if those are

8 treated as purely legal issues, as has been suggested,

9 where there will be no evidence, they'll only be purely

10 legal briefings, well, then we want to participate that

11 way, because everybody will be participating that way,

12 but if there is evidence to be submitted, if there's

13 testimony to be offered, then we want to participate

14 that way on those three limited issues. We're not

15 talking about blowing up the whole process here. We're

16 talking about three limited issues, which are limited in

17 scope but they are very big in impact on PacifiCorp's

18 interest that I have identified.

19 MR. VERANTH: Are there questions from the board?

20 MR. HORROCKS: Fred, a question for you. There were

21 comments made, without going back to the specific

22 attorney, about specific economic impacts that may or

23 may not be incurred by members of a county, but that's

24 not this board's concern because it's not an Air Quality

25 issue, but in regards to establishing this point of

1 standing, is it an issue?

2 MR. NELSON: If you ask that question of the Millard

3 County attorney, he would say yes. If you asked it of

4 Mr. Rathbun, he would say no. And I guess my comment is

5 I believe all of the counsel have agreed that the

6 standing issue, the way the Utah courts have defined it,

7 boils down to you can have one of three paths you can go

8 down as a board. The first path is you can find a

9 distinct, specific palpable injury, and that is a way of

10 demonstrating standing. The second is to say, well, you

11 may not have an injury but you're the party that best

12 represents, even though you don't have any injury,

13 you're the party that best represents this particular

14 issue and you're in a position that you can bring that.

15 And then the third one is to find, as they've described,

16 that there is a public interest that's appropriate for

17 having that party present information. So that's the

18 best way that I can describe it.

19 The issue of what interests have been injured, the

20 question of economic interest goes to that first test is

21 has the county demonstrated a distinct injury by this

22 permit not being granted or granted in those respects.

23 MR. HORROCKS: Okay. John?

24 MR. VERANTH: Yes.

25 MR. HORROCKS: A question for Ms. Walker. In your

1 initial comments you indicated that Millard County had

2 represented that they did not represent the citizens of

3 Millard County but just the commission themselves. Is

4 that -- was that accurate? Did I --

5 MS. WALKER: Yes, that's accurate. They said that in

6 their response memo.

7 MR. HORROCKS: Okay, and --

8 MS. WALKER: I'll get a page.

9 MR. HORROCKS: Yeah, steer me to it.

10 MS. WALKER: It's basically a legal principle that

11 they admitted applies to their situation.

12 MR. HORROCKS: And does the county acknowledge that?

13 MR. JACKSON: I believe she's going to the parens

14 patriae issue, and I don't know that we admitted that we

15 don't represent the citizens at all, we do, but most of

16 all, we represent the county, the county as a whole, but

17 we think we also represent the citizens, but that was a

18 legal argument, the parens patriae.

19 MS. WALKER: Yeah, so what I'm referring to is Page

20 6.

21 MR. UTLEY: In which document?

22 MS. WALKER: The Statement of Standing and Petition

23 to Intervene that was filed by Millard County attorney

24 and the date is December 23rd. Wait, I think I have the

25 wrong -- I'm sorry, scratch that. Pardon me, I was

Page 62

Page 64

1 giving you the wrong cites. It was the reply memo, so
2 the title of it is: "Reply Memorandum in Support of
3 Millard County Commission's Statement of Standing and
4 Petition to Intervene," and that was filed at a later
5 date.

6 MR. VERANTH: If you give people the tab number, it
7 helps them a lot.

8 MS. WALKER: The 16th of March.

9 MR. NELSON: She doesn't have a tab.

10 MS. WALKER: I don't have a tab.

11 MR. NELSON: So who filed the pleading?

12 MR. JACKSON: Millard County, that's the reply in
13 support of our commission statement of standing and
14 petition, that's in reply to the secretary's --

15 MR. NELSON: I don't believe the board has that. I
16 didn't -- I didn't receive it nor --

17 MS. WALKER: Well, the page number I'm referring to
18 is 9.

19 MR. VERANTH: Okay, we have under Millard County, we
20 have the Millard County's petition to intervene, we have
21 the Sierra Club's response to the petition and the
22 Executive Secretary's response to the petition, so it's
23 sounds like this is --

24 MR. NELSON: Was there a further pleading filed that
25 was a reply?

Page 63

1 MR. JACKSON: Yes, there was on March 16th.

2 MS. WALKER: Well, I mean, we got it.

3 MR. NELSON: I did not get one and I wasn't -- I'm
4 sorry, we just didn't have it. Did the Executive
5 Secretary receive it?

6 MR. STEPHENS: Anything that we received in multiple
7 copies, we sent a long to the office, so you should have
8 a copy.

9 MR. RATHBUN: This is the pleading. The certificate
10 of mailing does not include reference to Mr. Nelson or
11 to the board. It includes Holme, Roberts; Mr. Stephens
12 and myself; Joro Walker; John Finlinson; Stoel, Rives;
13 Mr. Jenkins and James Cannon and it's entitled "Reply
14 Memorandum in Support of Millard County Commission
15 Statement of Standing and Petition to Intervene."

16 MR. NELSON: I didn't realize that had not been
17 filed.

18 MR. JACKSON: I'm sorry.

19 MR. NELSON: Sounds like we need to get a copy of
20 that to the board.

21 MR. VERANTH: And perhaps in fairness to you, since
22 it seems like this was a mistake, why don't we give you
23 a couple minutes to summarize what you have in this
24 document that we should have seen.

25 MR. JACKSON: Well, basically we -- we -- there was

1 an argument on the parens patriae, which we state we
2 think the commission is the most appropriate party or
3 body to represent the citizens of the county and our
4 reply memorandum was in response to the Sierra Club's
5 They stated some law that said the commissioners don't
6 have the authority to represent the citizens. Our
7 response was, yes, we do, we are, but even more
8 important than that, we're representing the county as a
9 body in addition to the interest of the citizens.

10 MR. VERANTH: Yes.

11 MS. SHOOP: Mr. Chairman, can I ask a follow-up?

12 MR. VERANTH: Yes, please do.

13 MS. SHOOP: This is for Millard County. What's your
14 position with respect to amicus curiae status?

15 MR. JACKSON: Well, we certainly think that our
16 position in that regard is not as important as it is to
17 PacifiCorp, because of the precedent that they're
18 talking about, that wouldn't concern us. We think that
19 we could make our voice heard that way, but we do
20 believe that we definitely have standing as the most
21 significant -- the party with the most significant
22 interest.

23 We realize that it's quite unusual to file a
24 petition to intervene when we are in support of the
25 approval order, but that we know of no law that says we

Page 65

1 can't. We just think this is more appropriate that we
2 be granted standing if the Sierra Club is, just think
3 it's very important. We think we represent the interest
4 of the county and the citizens more than they do.

5 MR. VERANTH: Jerry?

6 MR. GROVER: I had a question for the Sierra Club
7 representative and couple for the Executive Secretary.

8 MR. VERANTH: Okay.

9 MR. GROVER: You talked about no prior participation
10 by PacifiCorp being a premise in the process for not
11 granting that. Is there any case law that you were
12 citing that's part of that? It's kind of a new
13 argument. I didn't see it really briefed.

14 MS. WALKER: Well, it is in our response to
15 PacifiCorp. We did bring it up. It's essentially we
16 see it as evidence that they didn't have a personal
17 stake in the proceeding such that they participated in
18 it along the way, so it's not a sort of independent
19 issue. It's just further evidence of the fact that a
20 personal stake, which is one of the requirements, which
21 is one of the ways, as Mr. Nelson explained, to get
22 standing, a personal stake, so our argument is that if
23 they did have a personal stake in this proceeding, that
24 they would have participated in it from the get-go
25 instead of waiting to the last minute and essentially

1 asking to participate in this process in a way,
2 particularly if they're allowed to present evidence and
3 call witnesses, that will sidetrack the main issue here,
4 which is the two permits before the board.

5 Does that help answer your question?

6 MR. GROVER: Yeah, I just was wondering whether if
7 there was something you were citing. I mean, there are
8 some situations where if you don't intervene or you're
9 not part of the process initially, you may lose rights
10 further on. You're not asserting that?

11 MS. WALKER: No.

12 MR. GROVER: You're just saying there's no personal
13 stake.

14 MS. WALKER: No, and I think you would call that
15 exhaustion. They all call it exhaustion, the
16 administration, and, no, we're not saying that because
17 there appears to be no requirement.

18 MR. GROVER: Okay.

19 MR. JENKINS: Do I get a chance to respond to that?

20 MR. VERANTH: Yes, please. In fact, I'm going to
21 encourage the attorneys to kind of get by the table, if
22 they can, that way we don't waste time with people
23 moving back and forth to ask questions.

24 MR. JENKINS: And that's fine.

25 MR. VERANTH: Because I want to give time to reply to

1 anyone.

2 MR. JENKINS: Okay, and I appreciate that. We didn't
3 bring the issue up. We didn't bring the issue before
4 the Air Quality Board, and so when the issue comes
5 before the Air Quality Board, we see how it can impact
6 us, that's the time when we need to speak up and
7 respond. We didn't participate in the IPP public
8 comment proceeding. We did not participate in the SPC
9 public comment proceeding. Whether we did or didn't has
10 no bearing on our ability to seek intervention and
11 establish standing in this proceeding when the Sierra
12 Club is urging a novel interpretation of these rules
13 that will apply to us.

14 This is a time for us to speak up and we did and we
15 don't believe that our lack of participation in the
16 prior proceedings during the public comment period
17 should now preclude us from speaking up at the very time
18 that is right for us to speak up.

19 MR. JACKSON: The same is true with Millard County,
20 we're in this because of the Sierra Club's petition to
21 intervene and for that reason.

22 MR. GROVER: The other question I have for the Sierra
23 Club representative is the issue was raised about Utah
24 case law, I mean, you obviously sort of do cite Utah
25 case law. Some of the requirements were based on the

1 federal, either the district or the Supreme Court. Is
2 there some argument or assertion that those cases are
3 somehow to be considered Utah case law by some citation
4 and otherwise? I mean, I don't know. That argument
5 didn't seem to be really addressed other than you did
6 say you had some Utah case law but you didn't really
7 defend the federal case laws you were citing.

8 MS. WALKER: Well, a sort of slightly technical
9 answer to that question is that, of course, any
10 adjudicatory board can be persuaded by the reasoning of
11 other bodies, particularly if they're as sophisticated
12 and is as experienced at dealing with standing issues,
13 particularly of environmental plaintiffs as they're
14 called, as with federal courts and the United States
15 Supreme Court. I mean, anybody I would think involved
16 in a situation like that would say, yes, these people
17 know what they're taking about.

18 Is standing in Utah and standing at the federal
19 level the same? No, it's not, because the Utah Supreme
20 Court is the ultimate arbiter of standing, so it's
21 persuasive, it's not -- you know, this board doesn't
22 have to comply with law that comes from other
23 jurisdiction, but it is learned and there's a lot of
24 thinking and experience that goes into it.

25 MR. GROVER: Okay.

1 MR. HALEY: Can I comment just briefly on that?

2 MR. VERANTH: Yeah.

3 MR. HALEY: My only point about that is Utah State
4 case law is more conservative and stricter than federal
5 law, which is why I pointed that out, so you really need
6 to look at the Utah State cases because they really, as
7 in a lot of things, Utah law is more conservative and
8 stricter than federal law. That's all.

9 MS. WALKER: May I respond?

10 MR. VERANTH: Sure.

11 MS. WALKER: Actually I think that Utah law is much
12 more lenient. There's no test in federal law for the --
13 as Mr. Nelson put it, the three pathways. Federal law
14 only has the one pathway. There are no other pathways
15 for establishing standing in the federal judicial
16 system, so this most appropriate plaintiff and the
17 public interest test does not exist in federal law, so
18 actually Utah law is more lenient and grants standing in
19 more situations than federal law.

20 MR. VERANTH: Do you have one for the Executive
21 Secretary?

22 MR. GROVER: Yes, just two more and that's it. Well,
23 probably just one for the Executive Secretary. I guess
24 I'm just trying to flush out what you're really meaning
25 in your arguments where you state that you do not

1 concede that Sierra Club has standing, so you're
2 basically saying that they do not -- legally
3 conceding -- you're not stating that they legally have
4 standing but you're not opposing their petition. My
5 question is: If you make a determination -- if you're
6 making a determination that they don't have standing,
7 why would you chose not to defend that petition?

8 MR. RATHBUN: Right, I think it's probably a legal
9 nicety that I could have left out of the brief in the
10 sense that jurisdiction can be raised at a later time
11 even by the court itself, including standing, which is a
12 jurisdictional element, and -- but at this point, again,
13 we're satisfied that we're willing to go forward. The
14 Sierra Club has made its case sufficiently that we don't
15 oppose it. Just recognizing that at some point
16 somewhere down the line, Executive Secretary, any other
17 party, this board or the court of appeals could possibly
18 raise it. We don't intend to.

19 MR. GROVER: Well, I'm just trying to get your
20 position.

21 MR. RATHBUN: Right, our position --

22 MR. GROVER: That's what your brief's supposed to say
23 is that it's your determination that your position is
24 that the Sierra Club does have legal standing or does
25 not have legal standing.

1 MR. RATHBUN: It's our position that we don't oppose
2 their standing and we leave it to the wisdom of this
3 board to decide whether they do, because after all, many
4 of the other parties take great issue with Sierra Club's
5 standing.

6 MR. GROVER: So you're really making no legal
7 determination?

8 MR. RATHBUN: That's right. We're leaving it to the
9 board, but we do not oppose their standing.

10 MR. GROVER: Okay. That seemed a little -- I don't
11 want to say wishy-washy. That's not a legal term. I'm
12 just trying to flush that out.

13 MR. RATHBUN: That's perfectly fair, but, you know,
14 we're also a public entity.

15 MR. GROVER: I understand.

16 MR. RATHBUN: Sometimes we take little different
17 positions than private institutes do.

18 MR. GROVER: That was my last question.

19 MR. VERANTH: We need to move fairly quickly to a
20 vote so we don't run out of time. Do you have any
21 questions from board members?

22 MR. HORROCKS: Maybe a quick one to Fred.

23 MR. VERANTH: Yeah.

24 MR. HORROCKS: I think it goes to the Executive
25 Secretary's position that one of the key issues here is

1 process and I think this board shares that view as
2 well. As we move forward from this point, we want to do
3 it in the light of day and we'll withstand all of the
4 scrutinies and, therefore, the compromised position of
5 we'll let everybody participate but we won't establish
6 standing, is just that, a compromise, and I'm concerned
7 that we may -- we will tend to gravitate to that same
8 position. We want it to be open. We want everybody to
9 participate, and, therefore, if there is way to dodge
10 the hard question of standing, can we?

11 MR. NELSON: I believe the board has an obligation to
12 make a determination on the intervention petitions and
13 say, yes, we're going to allow you in because we believe
14 you've made a demonstration or we're not.

15 MR. HORROCKS: If we found that nobody had a
16 standing, what would be the outcome?

17 MR. NELSON: Well, if you find that the Sierra Club
18 and Grand Canyon Trust and the Sevier County Citizens
19 don't have standing, just that in and of itself would
20 probably make these proceedings go away, because there's
21 nobody contesting the permit at that point.

22 MR. HORROCKS: Okay.

23 MR. VERANTH: To build on what Fred said, I think
24 it's -- these are very important issues, these are
25 likely to be reviewed by the court. Having been a

1 hearing officer for the board, I find one of the
2 important things is we need -- the court, in their
3 cases, they say they always defer to the technical
4 expertise of the board, so I think it's up to us to
5 make -- using our expertise, make an affirmative finding
6 for the record that then can be -- can be reviewed.

7 I was going to make one comment, since attorneys
8 love to quote one sentence out of a case and then the
9 other attorney quotes the next sentence, I asked Fred to
10 send me the whole case, and quoting from the Utah
11 Supreme Court National Parks case on standing, it says:
12 "Standing is a flexible legal concept designed to
13 preserve the integrity of judicial adjudication by
14 requiring legal issues be adequately defined and
15 crystallized so that judicial procedures focus on
16 specific well defined legal and factual issues. To that
17 end, the parties must have both a sufficient interest in
18 the subject matter of the dispute and a sufficient
19 adverseness so that the issues can be properly
20 explored." And I think that's been really iterated here
21 in terms of whether PacifiCorp and Millard County have
22 sufficient adverseness.

23 Do any of the attorneys want to comment on that?

24 MR. JENKINS: I think we have commented on that. I
25 mean, I can add more but I think we stated our position

1 very clearly.

2 MR. RATHBUN: I think the Executive Secretary has as
3 well.

4 MR. VERANTH: Okay, thank you.

5 MR. RATHBUN: May I, Mr. Chairman? The reply memo
6 that was missing, we had copies distributed to the
7 board. This is Millard County Commission's reply memo,
8 so hopefully all the board members have that.

9 MR. VERANTH: All right. I think it's something we
10 will have to read.

11 Are the board members ready to start a series of
12 motions and work our way down through the listed
13 petitions?

14 MS. SHOOP: Can I ask a question?

15 MR. VERANTH: Yes.

16 MS. SHOOP: You may have answered it. How long do I
17 need to get to the University for a 4:30 talk?

18 MR. VERANTH: I've made it out here in 25 minutes.

19 MR. OLSON: I just want to say something before we
20 start the voting process. This has been interesting for
21 me. I'm a cattle and turkey rancher. To use a pun, I'm
22 plowing new ground here, but it has been interesting and
23 I don't think I've ever seen this many attorneys
24 together in all my life, but it has been an interesting
25 process and I thank you all.

1 fact, courts have recognized that if one plaintiff gets
2 in, let them all in. And we're representing both
3 entities. They don't diverge in interest or in points
4 they make before the board, so -- so --

5 MR. NELSON: That was the issue, are we going to see
6 another counsel for Grand Canyon Trust or are we going
7 to see you?

8 MS. WALKER: I think you're just going to see me and
9 Shawn certainly, right, so there's no divergence in
10 their interests.

11 MR. NELSON: Okay.

12 MS. NIELSON: Mr. Chairman, I'd like to offer an
13 alternative just in terms of the order of the Sevier
14 Citizens group as opposed to Sierra Club/Grand Canyon
15 Trust. The Sevier Citizens have an interest in one of
16 these units.

17 MR. VERANTH: Right.

18 MS. NIELSON: And one of the issues that we're
19 looking at here is the best party to represent those
20 interests, and I'm wondering if it doesn't make sense to
21 look at the Sevier Citizens coalition first. I just
22 raised that as a procedural question.

23 MR. VERANTH: I think in reading the briefs, the
24 issues raised by the two are different in the sense that
25 Sierra Club has raised issues of regional visibility,

1 I'm not used to all the legal jargon I've been
2 hearing but it's been interesting and I'll do my part to
3 help make that proper decision.

4 MR. WESSMAN: Mr. Chairman, may I please be excused?

5 MR. VERANTH: Okay. What I propose is that we go
6 through, starting with Sierra Club's petition to
7 intervene, we first do a motion on Sevier Power and then
8 we do the motion on IPP so that we have both for the
9 record.

10 MR. NELSON: Can I just ask one question of Sierra
11 Club? The petition is named in terms of the Sierra Club
12 and Grand Canyon Trust. Are you asking that there be an
13 intervention by those separately, Sierra Club separately
14 from Grand Canyon Trust, or do you consider it a single
15 presentation? There was an issue raised that one of the
16 members that signed an affidavit signed on behalf of
17 Grand Canyon Trust and not Sierra Club and there were
18 others that signed for Sierra Club, and I didn't know
19 whether you were asking for two separate entities to
20 intervene or what your request was.

21 MS. WALKER: Well, certainly our request is that both
22 be allowed to intervene. As a practical matter though,
23 if one gets intervention, then, you know.

24 MR. NELSON: The issues would be presented.

25 MS. WALKER: The issues are presented anyway, and, in

1 national parks; whereas, Sevier Citizens has raised
2 issues of local impacts, so I think they each could be
3 best because they've raised different issues in
4 different ways.

5 MS. NIELSON: I'm simply raising a procedural
6 question for consideration on the motions to vote on
7 that.

8 MR. VERANTH: Okay.

9 MS. NIELSON: I guess I've stated it --

10 MR. VERANTH: Whoever makes the first motion to
11 determine.

12 MS. NIELSON: Well, I would move -- I would move that
13 we consider the Sevier Citizens petition first before we
14 address the Sierra Club/Grand Canyon Trust petition.

15 MR. OLSON: Second to the motion.

16 MR. VERANTH: Okay. All right, do we have any -- so 69.2
17 the issue before the board is to grant standing to
18 Sevier Citizens?

19 MS. NIELSON: No. No. The issue before the board is
20 to consider the standing of the citizens commission
21 before we consider the standing of Sierra Club and Grand
22 Canyon Trust.

23 MR. VERANTH: Okay, that's the motion, so procedural
24 motion.

25 MR. UTLEY: Yeah.

60.1 MR. VERANTH: In all favor of considering Sevier
 Citizens motion first?
 (Board voted.)
 MR. VERANTH: Opposed?
 MR. GROVER: Opposed.
 MR. VERANTH: All right, so I think it did -- let's
 do a -- we better do a poll. One opposed.
 (Board Polled.) Jim Horrocks, Dianne Nielson,
 Richard Olson, Morrell Shoop, Jeff Utley
 MR. VERANTH: Carries. The motion carries with
 opposition. All right then, so now we need a motion to
 discuss on the petition for standing.
 MR. UTLEY: Open it up for discussion.
 MR. VERANTH: Okay.
 MS. NIELSON: Mr. Chairman, I was convinced, as I
 looked at the information that the citizens group had
 presented, that they had raised issues of concern. I
 don't know at this point whether I agree with all of the
 statements that they've made and that's not we're about
 at this point, but I was -- I was persuaded, as I looked
 at their filings, that they do have reason to be
 involved in this discussion before the board on the
 granting of that permit and that they have presented
 information from individuals who are members of their
 group stating well their interest in being involved in
 the discussion, so I think they have -- I think they've

met what I understand to be the standing test in terms
 of defining an interest which is substantial or could be
 substantial, depending on how the board rules, and I
 was -- well, I don't know that they particularly
 suggested that they were -- well, that they -- that they
 were best qualified to represent that interest. I
 think -- I think that is a fair assumption on their
 part.
 MR. OLSON: Just want to make a comment. Mr.
 Chairman, I think I agree. I think the Air Quality
 Board would be more aligned with looking out for the
 health of the citizens of Utah than economics and I
 would -- I would I agree that, as far as I'm concerned,
 they've met the test.
 MR. VERANTH: Do I take that as do we have a motion?
 MS. NIELSON: Well, we've now had discussion before
 the motion.
 MR. UTLEY: I guess the question I have is how much
 public participation and how much, as that permit is
 sent out for public comment, is that group really the
 best group to represent the interests of the people down
 in the Sigurd area and Sevier?
 MR. HORROCKS: They represent the desire to revoke
 the executive order; in other words, they may not be the
 best -- the best party to represent the interest of the

citizens in the area but they're the ones that are
 coming forward wanting -- wanting to go to a hearing.
 MR. UTLEY: And certainly looking at the aerial
 photo, the location of the plant with regards to -- or
 relative to all the homes and certainly would see
 homeowners in that area certainly would have some
 concern and want to participate in that process. I
 guess I just -- as public hearing and the opportunity to
 comment on the permit before it was approved, I don't --
 I guess it's part of the support from the people in that
 area as well. I don't hear too much from that group and
 I'm just wondering how much support there was from the
 citizens that own those houses as well.
 MS. NIELSON: Mr. Chairman, my sense is that's the
 same discussion that we were just in with Millard
 County, that the citizens who support this are probably
 more likely, if they want to voice their opinions before
 the board, to file an amicus brief or other -- I mean,
 that seems to be an option before them. It may not be
 the only one but it is one that remains.
 MR. UTLEY: I guess from a procedural standpoint,
 they have that option in this proceeding.
 MR. GROVER: My position is -- I guess I have
 listened to the lawyers a lot, but I pretty well figure
 I've got to follow what the law says. I've got to make

a finding on the standing. There's a few different
 tests. I'm just not seeing it in particularly in this
 petition. I understand there's public input and all
 that. As an elected official myself, I hear a lot of
 it. But this is an administrative proceeding, not a
 legislature proceeding that we're talking about, so we
 have to -- the intervention is to ^{change the} -- the
 approval order, not to discuss all the merits of a plant
 in a particular area. They have to establish certain
 things, and I don't feel that they've met that test, so
 my opinion might be different than some of the board
 members based on that. I mean, I'm just trying to go
 with what the specific requirements of law are and
 there's some different interpretations here and I'm
 trying to, you know, bear through them in terms of
 what's most applicable I think by reading the case law,
 which is what we're tasked to do.
 MR. VERANTH: Yes.
 MR. GROVER: It says we've got to look at Utah case
 law and say whether under Utah case law these entities
 meet the standing test, so.
 MS. SHOOP: Mr. Chairman, as I understand it right
 now, we're just talking about Sevier County Citizens
 group?
 MR. VERANTH: Yes.

1 MS. SHOOP: Not some other groups, but as I look at
2 the test, I mean, the question is: Have they identified
3 a palpable injury? And what they have alleged is that
4 they live, you know, within miles of the power plant,
5 they have alleged health effects, they have -- those
6 sorts of things do go to the emissions that are approved
7 under the approval order I would think and I think
8 that's probably enough to show standing. Right or wrong
9 whether or not they win on the merits, it's just the
10 standing issue.

11 MR. GROVER: I guess I'm just not convinced by what's
12 presented that that's been established. I mean, there
13 are certain people that say they can be affected and all
14 that, I understand that, but you have to make a
15 finding. One of the attorneys did say it has to be
16 based on some facts, so.

17 MS. SHOOP: Well, I guess then I would ask a question
18 of Mr. Nelson. I mean, is there a requirement that
19 alleged medical injuries or those kinds of things have
20 to be supported in a standing petition by scientific
21 evidence or medical evidence?

22 MR. NELSON: All I can do is just describe the
23 language in those court opinions, and the Sierra Club,
24 what's been referred to as the Sierra Club 2 case didn't
25 really get to that issue because the court said we're

1 going to find that the public interest is so significant
2 here that we think it's important to listen to these
3 people and so we're not even to get to the other tests.
4 The Sierra Club 1 case, it dealt -- it denied
5 standing to the Sierra Club on the basis of the
6 relationship between the issues presented were different
7 from what the injury was that was presented, but the
8 court didn't say that the allegation of injury
9 necessarily had to have an affidavit that might help as
10 being effected or would be effected if this plant went
11 in. It was a general allegation that was accepted.

12 The federal case law, as I read it, allows an
13 allegation of I live in the area, I am potentially
14 impacted and that is a sufficient nexus to get me there.

15 MS. NIELSON: Mr. Chairman, I would move that the
16 board grant standing to the Sevier County Citizens for
17 Clean Air and Water with regard to the Sevier Power
18 Plant permit appeal.

19 MR. OLSON: Second.

20 MR. VERANTH: Second by Richard Olson. All right,
21 are we ready for a vote? All in favor?

22 (Board voted.) For: Horrocks, Nielson, Olson,
23 Shoop, Utley

24 MR. VERANTH: One, two, three, four, five. Opposed?
25 Five and one chair not voting, so the motion carries.

1 All right, then, Dianne, did you want to take all
2 the Sevier issues first?

3 MS. NIELSON: No, no, I just wanted to -- my motion
4 was only to move that one of out order.

5 MR. VERANTH: And they have -- and their only appeal
6 is to Sevier Power Company's proposal, so we do not have
7 an IPP issue with regard to this party, so then the next
8 one we will consider would be the Sierra Club petition
9 for standing, and let's keep them in that same order
10 then for Sevier Power, and then we can consider Sierra
11 Club's standing for IPP, so we can discuss them both at
12 the same time. I think we need two motions for the
13 record. Discussion.

14 MS. NIELSON: Just in the context of getting us maybe
15 back into an order of having a motion and then
16 discussion, I think that may be a little bit better way
17 to go, I would move that Sierra Club and Grand Canyon
18 Trust not be granted standing with regard to the Sevier
19 Power Plant permit appeal. 81- 82.7

20 MR. OLSON: Second, Mr. Chairman.

21 MS. NIELSON: And if I could just discussed briefly?

22 MR. VERANTH: Yes.

23 MS. NIELSON: My sense is that if we're looking for
24 the best representation of injury and position in terms
25 of carrying that issue forward, I believe that the

1 Sevier Citizens group represents that, and while I
2 appreciate the arguments that Sierra Club and Grand
3 Canyon Trust are making, I think that the Sevier
4 Citizens group, in fact, best represents those issues.

5 MR. VERANTH: Comments?

6 MR. UTLEY: I agree with Dianne. I think the Sierra
7 Club failed to show where there was distinct, palpable
8 injury and I don't think they are the best party to
9 represent the interests of the citizens in Sevier
10 County.

11 MR. VERANTH: I see a -- I kind of differ on this
12 because Sierra Club has brought up a large number of
13 very specific issues of law regarding how the back
14 process works, what's being considered, how this impacts
15 things like mutual visibility, which was not brought up
16 by Sevier Citizens; in other words, you really have two
17 different kinds of impacts. If you've got a winter
18 inversion, the smoke's trapped in the valley, it's going
19 to hit the people right here on this map, but when I go
20 to Western Regional for our partnership meetings, we
21 talk about power plants in the West, because they have
22 impacts on sites hundreds of miles away, and Sierra
23 Club, in very close parallel to the National Parks case,
24 one of its main purposes is environmental protection and
25 has been an active participant in these regional air

1 quality issues and they have raised a large number of
2 regional scale issues that applied to Sevier Power but
3 are much broader than the issues raised by Sevier
4 Citizens for Clean Air and Water.

5 MR. HORROCKS: John, I'm confident -- I'm confident
6 that the Sevier County Citizens will be more than happy
7 to solicit the help of Sierra Club in helping represent
8 their interest.

82. 9 MR. GROVER: I will comment. I think I agree that
10 they have a lot more specific arguments, but I think
11 we're deciding standing, not necessarily evaluating all
12 of the 12 criteria. I mean, I don't -- I don't think I
13 can concede that their petition was a lot more
14 exhaustive. Of course, you know, I voted against the
15 initial one. I do think they do have a better case than
16 Sierra Club. I mean, I have voted against them having
17 standing in terms of the proximity to the plant and
18 those type of things, not the individual petitions.

19 MS. SHOOP: I guess I have a legal question then. Is
20 there a -- I understand there's an argument to be made
21 in certain cases about who's the most appropriate party
22 to bring it, but if both parties showed standing under
23 the basic standing test, is it my understanding that's
24 not a test that -- the most appropriate party test is
25 not one you have to meet if Sierra Club shows standing

1 MS. SHOOP: I have a comment or just something to put
2 out, and I guess, you know, to say this right now my
3 view of the Sierra Club standing relative to the IPP is
4 very different than my view relative to Sevier, but if
5 they're basing that standing on two citizens in Sevier
6 County that also have similar bases in terms of
7 proximity or health concerns, I guess I'm questioning
8 whether or not there's a reason that we would allow
9 Sevier in but not Sierra under that circumstance, and
10 that's just under the first standing test, not under the
11 who's the best party test.

12 MR. OLSON: Call for a vote.

13 MR. VERANTH: Okay, so we have a motion to deny
14 standing to Sierra Club in the matter of Sevier Power.
15 All in favor? *For: Horrocks, Olson, Nielson*
16 (Board voted.) *Grove*

17 MR. VERANTH: Opposed? *Marcella Shoop*
18 (Board voted.)

19 MR. VERANTH: One opposed, so the motion carries to
20 deny standing to Sierra Club for the matter of Sevier
21 Power.

22 Okay, then next we would consider the motion of
23 standing for Sierra Club in the matter of IPP. Do we
24 have a motion?

25 MS. JOHNSON: Did you vote?

1 on those bases?

2 MR. NELSON: There's three -- like I said, there's
3 three ways you can show standing, by specific injury, by
4 most appropriate party and by general public interest,
5 significant public interest that should be considered in
6 the review, so there's those three opportunities.

7 MR. GROVER: I'll call the question, if we're ready.

8 MR. VERANTH: I would like to raise the question for
9 the board members. One of the tests is are the issues
10 of significant public interest that would not be raised
11 if the party in question was not -- did not have
12 standing in the dispute, and I would submit to the board
13 that there are issues with regard to Sevier Power that
14 would not be raised if Sierra Club is not granted
15 standing because they addressed a long list of very
16 specific legal and procedural issues.

17 MS. NIELSON: Could I ask a question? Fred, my
18 understanding, however, is that Sierra Club and Grand
19 Canyon Trust could still raise those issues as amicus,
20 in an amicus brief, they wouldn't be able to participate
21 in presenting issues in cross-examining witnesses, but
22 they could still present those issues to the board. Am
23 I correct?

24 MR. NELSON: If the board would allow them to.

25 MS. NIELSON: If the board granted that.

1 MR. VERANTH: The chairman doesn't vote unless it's a
2 tie.

3 MS. JOHNSON: Okay, thank you.

4 MS. SHOOP: I'll make a motion that in the matter of *944*
5 the IPP Unit 3 that standing to the Sierra Club be
6 denied, Sierra Club and Grand Canyon Trust.

7 MR. VERANTH: Do we have a second to that motion?

8 MR. OLSON: I second the motion.

9 MR. VERANTH: Who wants to speak on that motion?

10 MS. SHOOP: I guess in this case, I think that,
11 again, here it's -- I don't see a distinct and palpable
12 injury. It's more generalized references to people
13 using the area or visiting the area in a further way, so
14 I don't think their case is as clear and that's just my
15 distinction in terms of my different views on the
16 standing.

17 MS. NIELSON: I thought -- I thought that you made a
18 good comment on representation and I saw the same
19 discussion as operating in the exact opposite way. I
20 felt that those individuals who were similarly
21 represented in both petitions actually did have the
22 ability to carry interests that we're now defining in
23 this case as Sierra Club's interest, so I felt
24 comfortable about having the citizens group represent it
25 for Sevier Power, but I think that the issues that are

1 being raised by Sierra Club and Grand Canyon Trust in
2 this case, but for the Sierra Club being granted
3 standing, will not have a way of being heard, and so I'm
4 inclined to believe that -- that they -- that they
5 should be granted standing for IPP Unit 3.

6 MR. HORROCKS: I think I support what you just said,
7 Dianne. I, from a technical standpoint, would be
8 inclined to say that Sierra Club does not have standing,
9 but if we find that way, there will not be a hearing on
10 the appeal, and so if it's our desire to go to a
11 hearing, we basically are de facto going to have to find
12 Sierra Club as having standing.

13 MR. GROVER: Right, I think the issue is not whether
14 we want to have another hearing or not, the issue is
15 whether these people have standing under Utah case law
16 or not under Utah case law and to be the mean guy or
17 whatever but that's the criteria we're supposed to
18 follow and that's a criteria our attorney has told us
19 that we need to follow. There's some differing in
20 interpretations there.

21 MR. NELSON: If I could comment on that. I mean, the
22 basis, as I understand it, would be is that the issues
23 would indeed go under the separate decision making
24 process of the issues are they would be the most
25 appropriate people to present those issues and the

1 the natural beauty of national parks, and although
2 others may also have an interest in land exchange, it's
3 unlikely that any other party had a greater interest in
4 asserting that the state ought to give priority to
5 nonmonetary values, and then later on, this is the one
6 that talks about standing may still be established for
7 important public issues if no one else has a greater
8 interest in the outcome and the issues are unlikely to
9 be raised at all, unless a particular plaintiff has
10 standing to raise the issues, and I think that really
11 ties to your point, that unless we grant standing, these
12 issues will not be raised at all for the board. I think
13 case law does support that basis for granting standing.

14 MR. GROVER: Part of your premise though is there was
15 not any kind -- I mean, in this case, I don't know about
16 the previous district courts or whatever. The issue is
17 we had a process that was gone through, that had all
18 kinds of input to it, so we have to determine -- you
19 know, we can always make some argument that there's
20 always issues out there that people weren't satisfied
21 with through that process. I don't think that's what
22 we're -- what the whole premise of the intervention is.
23 It's basically saying they can intervene. The Executive
24 Secretary makes a decision and if there's damage to an
25 individual, they can petition for intervention to have

1 issues are of sufficient public interest that they
2 warrant being presented in that manner. That would be
3 the argument. The other argument would be that you
4 don't find it.

5 MR. HORROCKS: My concern, Jerry, is -- is that it's
6 back to that process. I'm not going to even begin to
7 imply that I'm an attorney or understand the law. I'm
8 not going to imply that I'm a judge. I'm more concerned
9 about the process element that the executive director
10 brought up in making sure that at the end of the day the
11 citizens of the state feel that they had the proper
12 access to this board to argue their point of view
13 whether they win or not, and so I'm agreeing with your
14 point, not disagreeing, but I'm just letting everybody
15 know, I'm going to have a tendency to say let's move
16 forward with -- with -- with a process that -- that
17 gives the appeal to the IPP permit the light of day and
18 we'll go grind through that process.

19 MR. VERANTH: Again, you know, as we said, we have to
20 follow case law and I think that the case that helped me
21 the most in my opinions -- in forming my opinions is the
22 Supreme Court case on National Parks and Conservation
23 Association and there are two things there, they say
24 that the organization, National Parks and Conservation
25 Association, was organized for the purpose of protecting

1 those addressed. I'm saying I think a lot of the issues
2 that are being presented, I'm not going to them because
3 we're determining standing, they were all available
4 during that process of fact finding, scooping and
5 everything, but I don't think the premise here is to
6 recreate through some intervention process that whole
7 process all over again. I think that's kind of why --

8 MR. HORROCKS: But I'm swayed by the executive
9 directors basically the way I interpreted their response
10 was recommending to go forward and hold a hearing. We
11 do not -- we do not want to commit to the fact that
12 whether Sierra Club has standing or not, but we'll waive
13 that for the time being and move forward. I think if
14 the Executive Secretary was taking the position, no, we
15 did everything absolutely right and this is a waste of
16 time and energy, then as I stated right up front, I,
17 frankly, in terms of test, I don't believe the Sierra
18 Club meets it, but I would like to see it go forward and
19 the appeal have a day in court.

20 MR. GROVER: I think it's clear in the record I
21 wasn't overly impressed by the language of the Executive
22 Secretary. I mean, when you do a legal opinion, you say
23 here is the legal basis for my opinion and then you
24 defend it. To say that you don't think that they have
25 position for standing, you're not conceding standing,

1 unless they go ahead anyway, that to me doesn't seem
2 like a very defensible legal position, so I'm just
3 saying that's -- I understand where you're coming from.
4 I'm just not all that convinced that the desire to
5 satisfy people is really what we're asked to do here.
6 We're asked to make a determination based on the law.

7 MR. UTLEY: In this case, I don't think the Executive
8 Secretary's going to offer an opinion, that's what the
9 board's asked to do, so I think their brief is probably
10 right, that essentially he's not going to offer an
11 opinion, that's what the board's asked to do is -- is to
12 make a determination.

13 In this case, again, I agree with Jerry, I think
14 there were certain public input in this process and I
15 think to me to go back and rehear some of those issues,
16 to me it says the process has failed, and I don't think
17 it was. I think in this case the burden is on the
18 Sierra Club to demonstrate that they have standing and
19 meet the requirements and I don't think that's been
20 done. I think in this particular case they have to show
21 distinct and palpable injury and I don't think that was
22 done. I think Sierra Club is going to oppose any power
23 plant and try to raise those arguments. In this
24 particular case, I think the burden is on them to show a
25 distinct, particular injury. I don't think they've met

1 MR. VERANTH: So then we would have left the question
2 of PacifiCorp's intervention on Sevier Power?

3 MR. NELSON: Yes.

4 MR. VERANTH: That's one of the main issues we have.

5 MS. SHOOP: Will you have a quorum if I leave?

6 MR. NELSON: You will have a -- six constitutes a
7 quorum. It means that the chair will have to vote.

8 MS. SHOOP: I'll wait five minutes.

9 MR. VERANTH: Okay.

10 MR. OLSON: I'll wait a few more minutes.

11 MR. VERANTH: Do we have a motion regarding
12 PacifiCorp's petition to intervene on Sevier Power?

13 MR. HORROCKS: I will in the interest of time, I'll
14 make a motion that PacifiCorp be denied standing.

15 MR. VERANTH: Do we have a second?

16 MS. NIELSON: Mr. Chairman, for lack on a second on
17 that motion, I would motion that PacifiCorp be granted
18 standing.

19 MR. UTLEY: I would second that.

20 MR. VERANTH: Okay.

21 MS. NIELSON: At least we can go to discussion.

22 MR. VERANTH: Okay, so we have a motion before us to
23 grant PacifiCorp standing to intervene in the Sevier
24 Power Company.

25 MR. HORROCKS: Okay.

1 the standard of the law in this case.

2 MR. GROVER: Do we have a motion?

3 MR. UTLEY: We have a motion and we have a second.

4 MR. VERANTH: Are we ready for a vote?

5 MR. GROVER: The motion was?

6 MS. SHOOP: The motion is to deny standing.

7 MR. VERANTH: All in favor of the motion to deny
8 standing?

9 (Board voted.)

10 MR. VERANTH: Four, and opposed?

11 (Board voted.)

12 MR. VERANTH: So the motion carries, the standing is
13 denied, so on IPP we do not have a hearing. That makes
14 mute it appears the Millard County petition and the
15 PacifiCorp petition regarding IPP.

16 MR. NELSON: Now, there is an issue on IPP that IPP
17 has raised challenging the permit and that will have to
18 be dealt separately with respect to the petitions for
19 the Sierra Club and Grand Canyon Trust, because you've
20 denied intervention, those issues will not be heard, and
21 PacifiCorp, the issues they've identified that they were
22 interested in are no longer before the board.

23 MR. GROVER: For IPP?

24 MR. NELSON: For IPP.

25 MR. GROVER: We still need to address Sevier.

1 MR. VERANTH: Discussion.

2 MR. GROVER: Well, I'm supportive. I think I kind of
3 tried to get those questions out as to the procedural
4 issue, meaning, if you make modifications as part of the
5 intervention to the approval order, you're creating kind
6 of -- you're saying that's the only bite of the apple.
7 You're not saying that completely but you're saying
8 there's some significance.

9 MR. NELSON: Depends.

10 MR. GROVER: Yeah, to me that's -- I don't know. I
11 mean, the theory is you want to have them all evaluated
12 if you're granting the intervention, that's what I'm
13 saying, I think there's sufficient finding that maybe
14 they would be impacted significantly by it. I can't say
15 because we don't know what the board will ultimately
16 decide on, you know, the petition of the intervention,
17 so that's kind of what sways me is because I do think
18 the legal requirement probably is met. I think they're
19 saying they don't know for sure if it's met. I agree,
20 because they don't know what the ultimate result is
21 going to be, but, you know, maybe I haven't been on the
22 board long enough to see these things, maybe they don't
23 ever come, and I understand the concern where you have
24 impacted through our decision things that might directly
25 impact their notice of intent right in the middle of the

1 process and the only answer we can give them is we may
2 or may not consider you -- consider our modification to
3 be significant enough that we may consider you to have
4 standing or not in the future, that to me is a little
5 tenuous.

6 MR. HORROCKS: Call for a vote.

7 MR. VERANTH: All right, all in favor of granting
8 PacifiCorp standing to intervene in the Sevier Power
9 matter.

10 (Board voted.)

11 MR. VERANTH: Do we get -- you did not vote?

12 MS. SHOOP: I did not vote.

13 MR. VERANTH: So three in favor, *Grover, Horrocks, Utley*
14 Opposed? *Nielson, Olson, Veranth*

15 (Board voted.)

16 MR. VERANTH: Three opposed and the chair is going to
17 vote opposed, so that would constitute denying standing
18 for PacifiCorp.

19 MS. SHOOP: I'd like to make motion that PacifiCorp
20 be allowed the opportunity to file amicus in this
21 matter.

22 MR. VERANTH: Okay. We have a motion to grant amicus
23 status?

24 MR. GROVER: Second.

25 MR. VERANTH: All in favor of granting amicus

1 resolve at this time?

2 MS. WALKER: Mr. Chairman?

3 MR. VERANTH: Yes.

4 MS. WALKER: There are a few issues that I need to
5 bring up. The first one has to do with the IPP matter
6 that's still continuing, which apparently is going to be
7 IPP's challenge to the AO. Now, it was our
8 understanding that our matters were consolidated and,
9 therefore, that in seeking intervention in the matter or
10 standing, that we would be able to participate in that
11 aspect of the proceeding, so if that's going to go on,
12 then there's still this issue of whether we can
13 participate in that singular issue that's going to be
14 before the board.

15 The second thing is I would request with regard to
16 the Sevier Power Company matter that you stay the
17 proceedings while we appeal your decision as quickly as
18 we can to the relevant court.

19 MR. NELSON: The requirement is that the board will
20 need to issue written findings with respect to the
21 decisions they've made and I will need to prepare those
22 written findings, so the decision on the intervention
23 will not be final for agency purposes until that written
24 decision is issued and I would prepare that for the next
25 board meeting. They would then issue a findings in

1 status?

2 (Board voted.) *unanimously*

3 MR. VERANTH: Opposed?

4 Motion carries.

5 MS. NIELSON: Mr. Chairman, I would make a motion
6 that we allow the Grand Canyon Trust/Sierra Club to have
7 amicus status and that we in both -- I'm sorry, in the
8 Sierra -- I'm sorry, Sevier Power Plant, I'll get all
9 the S's right -- that we allow Grand Canyon Trust/Sierra
10 Club to have standing in the Sevier Power Plant.

11 MR. UTLEY: Not standing.

12 MR. NELSON: Not standing.

13 MS. NIELSON: I mean amicus, thank you.

14 MR. VERANTH: Do we have a second?

15 MS. JOHNSON: Would you restate that please?

16 MS. NIELSON: I move that the Sierra Club/Grand
17 Canyon Trust be granted or be allowed to file an amicus
18 brief in the Sevier Power Plant hearing.

19 MS. SHOOP: I'll second that.

20 MR. VERANTH: Okay. All in favor of granting Sierra
21 Club amicus status in matters of Sevier Power?

22 (Board voted.)

23 MR. OLSON: Abstain.

24 MR. VERANTH: One abstain. Motion carries. All
25 right, do we have any other matters that we need to

1 written form and at that point the time periods for
2 triggering an appeal would start, so you're not being --
3 you don't have a time frame running on you with respect
4 to that appeal.

5 MS. WALKER: Right, but the question I pose is will
6 you stay the proceedings -- so presumably Sevier
7 Citizens is going to proceed in front of the board with
8 their appeal at the AO and I'm asking that that be
9 suspended until we have the opportunity to appeal the
10 decision to the court so that we're not prejudiced by
11 the fact that the proceeding is going on without us
12 until we get a decision from the court. That's the
13 first matter.

14 The second is --

15 MS. JOHNSON: Excuse me, we're not picking you up.

16 MS. NIELSON: Excuse me, Mr. Chairman, I appreciate
17 that, but I think we've got the court reporter, so maybe
18 in the interest of time, could we go with the court
19 record?

20 MR. VERANTH: Yeah.

21 MR. NELSON: Let's deal with the other issue you
22 raised and that is the matters were consolidated and
23 you're indicating are you being granted standing to
24 participate in that contest between IPP and the
25 Executive Secretary with that particular provision

1 permit. I don't know that the motion went to that. The
2 board -- the board did not grant standing to the Sierra
3 Club for that proceeding, so my assumption is that
4 the board's motion was that in any issue with respect to
5 that, Sierra Club has not been granted standing, but
6 that's for the board to decide.

7 MR. GROVER: I think what they're saying is they're
8 saying they want to go to court so they can get a
9 determination and come back before we've gone through
10 the proceeding.

11 MR. NELSON: That's another issue. Let's deal with
12 the first issue first, and that is my assumption was is
13 that the board's decision was to not grant standing to
14 Sierra Club in any of the proceedings.

15 MR. GROVER: Yes, except for the amicus.

16 MR. NELSON: Except for the amicus. With respect to
17 the second issue, she's making a request that you stay
18 proceedings on the Sevier Power until she has an
19 opportunity to contest that before the court as to
20 whether the board's made an appropriate decision on the
21 standing.

22 MR. GROVER: First of all, is proper on -- is it
23 proper as part of this decision or is that a separate
24 agenda?

25 MR. VERANTH: I would say yeah.

1 MR. GROVER: Because I don't know the legal
2 implications of that.

3 MR. VERANTH: It really becomes a separate agenda
4 because first, as Fred said, we have to do the written
5 findings, that has to be signed, that takes place at the
6 next board meeting. That starts the clock, at which
7 point we need to then apply -- decide how we're going to
8 do it at a hearing officer or whatever and set a date
9 for a hearing and that would be the time that that
10 matter would be before the board, and Ms. Walker could
11 make the appeal to us then to stay the hearing until her
12 court action had taken place.

13 MR. HORROCKS: You will be able to argue to a court
14 that time is of the essence because we are not waiting
15 for the court.

16 MR. NELSON: She is asking to be able to file a
17 motion with the board to stay the proceeding, and
18 consistent with what Mr. Brandt said, they haven't
19 established a schedule at this point. What I understand
20 is the board would offer to you an opportunity to file a
21 motion to stay the proceedings, the parties could argue
22 that with a responsive pleading and then the board can
23 make a decision on that.

24 MR. GROVER: Yeah.

25 MS. WALKER: Oh, okay, and that's fine and I

1 appreciate that opportunity, and just to clarify, since
2 we're denied standing also in the IPP matter, we would
3 do the same for that as well.

4 Thank you.

5 MR. VERANTH: Okay. I think that takes care of that
6 long board action item and we're going into the
7 information items, so you people can be excused. Thank
8 you for staying as long as you could.

9 MR. NELSON: Can I just make one other procedural
10 comment though, and that is that with respect to the
11 Sevier Power issue, I would suggest that the parties,
12 the Sevier Citizens group and the Executive Secretary
13 and the Sevier Power get together and see if they can
14 propose a schedule to bring to the board at some later
15 meeting. If they can't agree on a schedule, then the
16 board would establish a schedule, but at least hear
17 something from them as to what they think should be
18 appropriate as far as a schedule.

19 MR. VERANTH: Mr. Finlinson?

20 MR. FINLINSON: In response to Mr. Nelson's last
21 issue, if you'll give us a date, we'll come.

22 MR. NELSON: Okay.

23 MR. FINLINSON: So tell us where you'd like us to be
24 and I think all the parties will be there.

25 MS. NIELSON: Mr. Chairman, is there more in terms of

1 discovery or other things to go on?

2 MR. NELSON: What I don't know is whether they want
3 to do discovery, whether they want -- what the Executive
4 Secretary wants as far as a schedule, so if you just
5 have a discussion and then that -- I mean, if you want
6 to come --

7 MR. FINLINSON: We had that discussion.

8 MR. NELSON: Pardon? No, you just bring that to
9 board, and it may be that at the next meeting you say to
10 the board we'll do whatever you want and that's fine,
11 but at least have a discussion amongst the parties.

12 MR. RATHBUN: Mr. Chairman, on behalf of the
13 Executive Secretary, I will make an effort to coordinate
14 with counsel. I think under the rules of civil
15 procedure typically the petitioner's or plaintiff's
16 counsel bears the burden but I can take a lead on that,
17 at least coordinating to talk about scheduling, but that
18 raises one other question, and that is the preexisting
19 order of this board was that 30 days after today's
20 decision, the parties would file their responsive
21 pleadings to the request for agency action. Is that
22 still the board's intention?

23 MR. NELSON: By decision I had assumed that 30 days
24 beyond was the day the board issues a final order.

25 MR. RATHBUN: Okay.

1 MR. NELSON: And so they would not have that final
2 order to issue until the next meeting. At that point it
3 would trigger 30 days, assuming that's the schedule that
4 goes forward and assuming that the motion that may be
5 coming from Sierra Club is considered by the board at
6 that point.

7 MR. RATHBUN: Okay. Thank you.

8 MR. JENKINS: With respect to the amicus opportunity
9 that was given to PacifiCorp in the IPP matter, we'll
10 ask --

11 MR. NELSON: In the Sevier Power matter.

12 MR. JENKINS: Or in the Sevier matter.

13 MR. NELSON: Right, you should be participating with
14 them as far as a schedule for when that would be
15 appropriate.

16 MR. JENKINS: Got you. Okay, very good.

17 MR. VERANTH: Are there any procedural issues
18 regarding --

19 MR. RATHBUN: Mr. Chairman, again, I don't mean to be
20 presumptive here, but other counsel can chime in, but on
21 the amicus status, the board is allowed to set any
22 conditions they think appropriate and I think it would
23 benefit us all to have some clear direction from the
24 board what that means. Normally amicus status means
25 filing briefs, arguing legal issues on the issues raised

1 STATE OF UTAH)

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3 COUNTY OF UTAH)

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6 I, DONNA M. WARD, certified Shorthand Reporter,

7 Registered Professional Reporter, and Notary Public

8 within and for the County of Utah, State of Utah do

9 hereby certify:

10 That the foregoing proceedings were held at the time

11 and place set forth herein, and was taken down by me in

12 shorthand and thereafter transcribed into typewriting

13 under my direction and supervision.

14 That the foregoing pages contain a true and correct

15 transcription of my said shorthand notes so taken.

16 In Witness Whereof, I have subscribed my name this

17 13th day of April, 2005.

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DONNA M. WARD, RPR
Certified Shorthand Reporter
Registered Professional Reporter
and Notary Public in and for
the County of Utah, State of Utah.

1 by the parties, not expanding through amicus status
2 beyond the issues raised by the parties, and I just hope
3 that the board would consider that and clarify that, so
4 that we, the parties, know how to conduct ourselves.

5 MR. VERANTH: I guess we could put on the agenda for
6 the next board meeting a specific discussion of the
7 procedures that we want to go forward.

8 MR. NELSON: And if you could present that as part of
9 the proposal. If you can define -- it would be helpful
10 if you could define the specific issues that you want
11 heard, you can agree on the specific issues that you
12 want heard and agree on a schedule for hearing that.

13 MS. NIELSON: Just a clarifying question, Fred,
14 you'll be drafting these orders for the board?

15 MR. NELSON: I'll be drafting -- I will be
16 circulating for the board a draft based on their -- your
17 decisions today.

18 MS. NIELSON: Okay. Prior to the next meeting?

19 MR. NELSON: Right.

20 MS. NIELSON: Thank you.

21 MR. VERANTH: All right, let's go very quickly
22 through the information items.

23 (Whereupon Section VI on the Final Agenda concluded.)

24

25

UTAH AIR QUALITY BOARD MEETING
March 9, 2005
MINUTES

March Work Sessions. The Board held a working lunch session at 12 noon prior to the March Board meeting to provide members with information on the PM10 Maintenance Plan and the concepts of PSD baseline and increment.

I. Call to Order.

Ernest Wessman, Vice chairman, called the meeting to order at 1:35 p.m. John Veranth was excused.

Board members present:

Jerry Grover	Dianne Nielson	Marcelle Shoop
Jim Horrocks	Richard Olson	Ernest Wessman
Teleconference:	Scott Hirschi	
Executive Secretary:	Richard W. Sprott	

II. Next Meeting.

April 13 at 1 p.m., May 4 at 1:30 p.m.

Due to a teleconference hook-up problem, all of the informational items beginning with VII. were given before the action items during the meeting. The minutes are in the agenda format.

III. Approval of the minutes of January 5, 2005, Board Meeting.

A summary of the changes of the minutes was reviewed. Correction on page 4, item VII. first and second paragraph, the word "recluse" should be "recuse." Richard Olson motioned for the minutes to be approved, Jerry Grover seconded and the Board, with Scott Hirschi on the phone, approved unanimously.

IV. Propose for Public Comment: Amend R307-110-10 and Add a New SIP subsection IX.A.10, PM10 Maintenance Plan for Utah County, Salt Lake County and Ogden City; Repeal and Re-enact R307-110-17 and SIP Section IX.H, Emission Limits. Presented by: Bill Reiss.

Rick Sprott reviewed two letters that had been received from EPA earlier in the week. EPA expressed concerns over a number of issues. Mr. Richard Long, EPA, acknowledged that staff had worked on them, but felt the issues had not been settled and expected the solution with the maintenance plan. Staff intended to do so. Some are in the inventory, modeling and technical SIP and others are separate regulatory issues. After Mr. Sprott spoke with Mr. Veranth this morning, Mr. Veranth suggested that the Board be apprised of the situation and issues. If the Board puts the item out for public comment, staff could then return and provide complete solutions and/or the status of each issue in question.

Dianne Nielson requested that the Board have plenty of time before hand to read all information before the next meeting.

Bill Reiss reviewed the PM10 SIP revision. The proposal addressed the 15 items listed as EPA concerns. The remaining issues will be on the top of the agenda to work out with EPA when the proposal is sent. The plan picks up where the existing SIPs left off. There were nonattainment SIPs for Utah County and Salt Lake County that were promulgated in 1991. In 1994 they were brought into compliance. This is a new plan and demonstrates maintenance of the PM10 standard through 2017. This allows staff to have EPA redesignate those areas back to attainment. It is based on a regional modeling analysis and includes all three nonattainment areas, Salt Lake County, Utah County and Ogden City. It shows compliance with the 24 hour standard. The plan is in two parts. Part A is the PM10 portion of the Utah SIP. Part H is the emission limits of the SIP. Part A explains the narrative that supports the whole SIP revision. It includes the monitored attainment of the standards, discusses the reason for the monitored, explains the administrative approval and the Utah air program in general, and has a modeled demonstration of maintenance, contingency measures and conformity budgets. Part H is the second portion of the Board packet. It deals with emission limits. It will replace the existing Part H of the PM10 SIP. It establishes emission limits for the large sources located in the three nonattainment areas. There are no restrictions reflected in the emissions, only the control strategies, which brought Utah back into compliance with the PM10 NAAQS.

Rick Sprott noted that the larger sources would be the SIP-named sources. Utah County sources and conditions will be the same as the last revision. There may be smaller area sources that will be affected by the general rules that will be described later.

Dave McNeill stated that this was an addendum to the existing SIP. It is documentation of how the rules are bringing Utah into compliance with the standard. It is the rules that regulate the sources.

After several questions and comments, Dianne Nielson suggested that when the proposal goes out for public comment that a copy of the PM10 SIP be included so individuals could understand how the new plan replaces section 9, of Part H.

Mr. Reiss said that staff is requesting an allocation of an additional mobile source budget from the existing safety margin in the plan. EPA has in its conformity rule outlined a process by which the Board can do this. The process will run planning projections of the mobile emissions budget through the air quality model for the prediction and compare it to the standard for PM10. If it is below the standard, a safety margin can be identified between the standard and the highest predicted concentration and it becomes the safety margin. This is allocated toward the mobile vehicle emissions budget. The staff would add some emissions to that budget, run the model again and see once more where the results are compared to the standard. Assuming it is still beneath the standard and maintaining compliance, then it has been demonstrated that there could be an allocation of extra emissions budgets. Staff has finished the exercise and still predicts maintenance of the PM10 standard through the year 2017. The addendum removes the unknowns in the process and includes actual numbers to show the safety margin in the mobile emissions budget. The tables at the end of the addendum show before and after analyses.

Dianne Nielson asked if the safety margin was available as a buffer for area sources and industry sources in staying below the PM10 limit, but not available to major point sources.

Mr. Reiss said that was correct.

There were further comments and explanations from the audience.

Ernie Wessman said that procedurally the Air Quality Board could allow the alternatives to give others an opportunity to comment on the allocation of the safety margin and then choose the path according to the comments.

- * Jim Horrocks proposed only one alternative vs. two because it would create confusion.

Mr. Wessman asked if any strong objections could delay the proposal and call for revisions and another public comment period?

Fred Nelson, Attorney General's office, stated that if the Board goes out with a proposal and takes comments, the Board would then go forward with the proposal. If the Board revises the proposal and does an alternative, the rule would have to go back out for public comment.

After lengthy discussion, the Board decided to leave in both alternatives to be discussed in public comment.

- Jim Horrocks moved that the Board approve for Public Comment that R307-110-10 be Amended and Add a New SIP Subsection IX.A.10, PM10 Maintenance Plan including the Revisions for Utah County, Salt Lake County and Ogden City, and Repeal and Re-enact R307-110-17 and SIP Section IX.H, Emission Limits and ask specifically that during the comment period for the public to address the preferences for the allocation of the safety margin from mobile vs. other sources.

Jerry Grover seconded and the Board, with Scott Hirschi on the phone, approved unanimously.

- V. **Propose for Public Comment: Amend R307-101-2, R307-165, R307-201, R307-204, R307-205, R307-206, R307-302, R307-305, and R307-310; New Rules R307-207 and R307-306.**
Presented by: Colleen Delaney.

Colleen Delaney explained that there were a number of rule changes that needed to go forward with the PM10 Maintenance Plan to address the transition from nonattainment to attainment. As the state transitions into attainment, the effective strategies that reduced emissions needed to stay in place. With the Board's request that staff review the rules, staff addressed specific rules that applied to PM10 nonattainment areas that helped make the transition to attainment. The 200 series applied to rules statewide, rural and urban. The 300 series applied to specific nonattainment areas. Staff looked at rules that applied to particulate matter to clarify separation. The rules that applied to the 300 series, PM10 nonattainment and maintenance areas, would stand alone and be included in the SIP. The 200 series would include the requirements that apply to attainment areas only. After approval, staff plan to take the rules that apply to the nonattainment areas and submit them to EPA as part of the SIP. Then staff would take the rules that apply to the rural areas of the state and withdraw them from the federal SIP. They would still fall under state rule and be enforceable. The rules in the packet were then reviewed.

Several members of the Board discussed the issue for clarification. It was noted that R307-309 was omitted from the agenda but was included in the packet.

Dianne Nielson asked the staff to talk to the railroads concerning locomotives that travel above 6000 feet about the diesel exemption being removed from the rule.

- Jerry Grover moved that the Board Propose for Public Comment: Amend R307-101-2, R307-165, R307-201, R307-204, R307-205, R307-206, R307-302, R307-305, R307-309, and R307-310; New Rules R307-207 and R307-306.

Richard Olson seconded and the Board, with Scott Hirschi on the phone, approved unanimously.

VI. Propose for Public Comment: New Rule R307-421, PM₁₀ Offset Requirements in Salt Lake County and Utah County; and Propose Modification to R307-101-2, Definitions.
Presented by: Colleen Delaney.

One of the effects of adopting the maintenance plan R307-421 is that when EPA redesignated Salt Lake County and Utah County to attainment for PM₁₀, there would be a shift from the nonattainment New Source Review to PSD. The nonattainment program has minimized the impact of new sources in those areas that have already violated the standard. For major sources of the pollutants in Salt Lake County and Utah County, the lowest achievable emissions rate (LAER) is applied. Offsets must be obtained and an existing source has to reduce emissions to make room before a new source can come in. Also, alternative siting has to be considered. When there is a shift to PSD, modeling analysis will need to be done for new major sources or modifications to an existing source, to make sure the PM₁₀ NAAQS is not violated. It will start with a clean area, add a new source and then look at the effect it had on the NO_x. An NO₂ increment analysis and BACT study would also be added.

Staff has looked at the PSD program and how it will be an effective tool in the new attainment areas. Under PSD, staff looks at individual pollutants. A large portion of PM₁₀ that is measured during the winter temperature inversions is not emitting directly as PM₁₀. It is converted from a gaseous state from SO₂ or NO_x into sulfates and nitrates. Under the PSD modeling, staff can measure the effect of primary PM₁₀ from dust or carbon. There is not a good mechanism for addressing the effect that SO₂ or NO_x might have on PM₁₀ and it is important to have that in the new PSD program. Staff used the same technique that was used with ozone modeling. Staff kept in place the effective measure offset provisions from the nonattainment area program as a state-only measure to address the formation of ozone.

The current offsets program in these areas has a requirement where the emissions of PM₁₀, SO₂ and NO_x are added together to determine whether or not offsets are required. When the areas are redesignated to attainment, the pollutants would no longer be added together. The rule should not allow inter-pollutant trading. It is recommended that the rule be kept as a state-only rule and not submitted to EPA as part of the maintenance plan. This would allow greater flexibility for implementing the rule and should not affect the approvability of the maintenance plan because the plan does not claim any emission reduction credit for this provision. This would be similar to the approach that was used for the ozone maintenance areas.

Modification to R307-101-2. When the PM₁₀ and SO₂ nonattainment areas are redesignated to attainment, staff will have to start tracking increment consumption. This program is to maintain the good air quality in clean areas and still allow room for growth and economic development. Using a hypothetical area and graphs, Ms. Delaney showed the NAAQS at 150. The actual air quality measured is around 50. The PSD rule allows for a certain amount of degradation. For a 24-hour PM₁₀ analysis, it would allow 30 micrograms of degradation to occur, but would not allow the area to degrade to the NAAQS.

Staff needed to define the baseline level, which is defined by time and area. The baseline level was established in 1979 by the first application for a major modification for a pollutant. The baseline is only established in attainment areas. At that time, there were and still are the same four counties in nonattainment: Weber County, Davis County, Salt Lake County and Utah County. Since then, there have been no major sources of PM₁₀. Any new source that was constructed would reduce the amount of increment and it would vary where growth occurred. A special provision is added to the rule for how a major source is dealt with. The major source baseline date was established as 1975. Any changes since that date that occurred at major sources due to construction would either increase emissions, which would decrease the increment; or decrease emissions, which would expand the increment. In 1975, nonattainment areas in Utah were over the standard.

Staff is recommending that the Board look at what the PSD program was trying to do, which is to maintain the air quality in clean areas while allowing a certain increment of degradation. Staff recommends that a change to the definition of the major source baseline date be changed from 1975 to when the area is redesignated to attainment. This would allow Utah to maintain the improved air quality that has been achieved over the last several years.

Questions from the Board were answered.

- Marcelle Shoop moved that the Board Propose for Public Comment: New Rule R307-421, PM₁₀ Offset Requirements in Salt Lake County and Utah County; and Propose Modification to R307-101-2, Definitions.

Richard Olson seconded the motion and the Board, with Scott Hirschi on the phone, approved unanimously.

VII. Information Items.

- A. Appeal of Sevier Power Company Permit and Appeal of IPP Unit 3 Permit. Presented by: Fred Nelson.

The Board had been scheduled to hear motions on two appeals for the Sevier Power Plant and IPP Unit 3 today. Due to requests for a 30-day extension by Rick Rathbun, AG's office, and Joro Walker, the Board will change the meeting date for the appeals to April 13. Due to Board member schedules, the meeting will start at 1 p.m.

- B. Schedule for NSR Reform Stakeholders Process. Presented by: Jim Schubach.

Jim Schubach reported that the Federal permitting programs had been modified in relation to major stationary sources. The revision took place in December 2002. Utah is required to incorporate those changes in the State permitting program by January of 2006. To meet this schedule, a review began in 2004 and will continue through this year. Initial meetings focused on revisions that would occur to major sources in nonattainment areas and PSD areas. The stakeholder meetings will examine how the rules will be integrated in the program. Staff hopes to bring recommendations to the Air Quality Board this summer. The Federal programs were challenged in the District Court in 2003, and a stay was not issued at that time. There were oral arguments in

2005, and no ruling has been made at this time. The implementation of the program is still required by January 2006.

- C. Draft Regional Haze SO2 Milestone Report for the Year 2003. Presented by: Colleen Delaney.

Currently out for public comment is the first milestone report, where actual SO2 emissions in the region are compared with the SO2 Milestone that had been developed for the regional haze SIP. This is the first checkpoint that is being looked at to see how staff is doing on the progress for 2003. The good news is that the region is currently about 25% below the milestone for 2003. The actual draft milestone report that was prepared by the Western Regional Air Partnership (WRAP) has been given to the Board. The audience has the executive summary of the first three pages. EX-2 is an overview as to where the milestone is. Part 1 adjusts the milestone to account for the five states that are participating. That is the 2003 milestone of 447,383 tons. The next item is the emissions in the region for 2003 for those five states. It has the actual emissions and then an item for adjustments that explain that we are comparing apples to apples. Some sources had changed the method of measuring emissions and staff wanted to make sure there would be a comparable adjustment. The SO2 emissions in 2003 were 329,000 tons. After the comments have been received, the five states will check and make sure all the comments have been responded to. As outlined in the regional haze SIP, the Executive Secretary will make a determination that either the milestone has been met or has been exceeded. An exceedence would trigger the backstop market-trading program. In this case, it is so far below, it is anticipated that the decision will be that the milestone has been met.

Dianne Nielson asked if there were any other entities that would have an option to come into the SIP and add any potential contributions, or were they just out of the program?

Ms. Delaney answered that for states in the region to participate, they needed to have a SIP in place by 2003. There were five states that met the criteria. The tribes do not have a deadline that they have to meet. WRAP is looking forward to the SIPs that are due in 2008 for the remaining states.

- D. Compliance. Presented by: Jeff Dean.
No questions.
- E. HAPS. Presented by: Bob Ford.
No questions.
- F. Monitoring. Presented by: Bob Dalley.

Bob Dalley reviewed all the graphs. He pointed out the highest concentration of PM10 measured for January and February showed another winter season without any PM10 problems. Two new stations were installed at Amalga and Hyrum in Cache County. PM2.5 monitoring for January, February and March showed 6 days that exceeded the health standard. Two more exceedence days and Cache County will meet the criteria to become nonattainment.

G. CEED vs. EPA, Decision by the D.C. Court of Appeals. Presented by: Rick Sprott.

Sometime back an organization named Center for Energy and Economic Development sued EPA again regarding the regional haze program. This time they sued on a number of grounds that were related to the legality of the SO2 annex. Two to three weeks ago the D.C. District Court rendered an opinion on the lawsuit. EPA lost the suit. It was a difficult opinion to follow, and the outcome has the potential of negating the 309 Regional Haze program that was set up based on the recommendations from the Grand Canyon Visibility Transport Commission. The states and tribes have been pursuing this for 15 years. As a result, EPA and the states affected have been in consultation. The letter in the packet was sent to Jeff Holmstead by the Environmental Commissioners from those states, including Dianne Nielson, summing up our belief that it is important to work with EPA to find a solution to overcome the difficulties of the court decision. Our plan is to move forward with that and continue with the 309 Regional Haze SIPs. The Board will be kept current as things unfold.

Rick Sprott announced that a number of Board members' term had expired. Richard Olson, who had served eight wonderful years, would be leaving. Richard Olson replied that dealing with turkey and cattle ranches hadn't given him the expertise that other Board members had had. But he did enjoy serving with the other Board members. It had caused him to think more in technological directions. Ernie Wessman thanked him for all his contributions.

Also, Scott Hirschi had been appointed to finish out Karl Brooks second term. This will be his last meeting. Mr. Wessman expressed thanks that Mr. Hirschi had been able to join the meeting by phone. Mr. Sprott expressed appreciation for Scott's recommendations and suggestions that had helped the Board. Scott Hirschi thanked the Board and expressed his pleasure for having served with the members.

Jeff Utley has completed his first term and will not be extending to a second. His new assignments will not allow the time to serve on the Board. He was thanked for his contributions.

Jim Horrocks and Wayne Samuelson have completed their first term and would be staying on for a second.

The meeting adjourned at 3:50 p.m.



FINAL

Adoption



State of Utah

Department of
Environmental Quality

Dianne R. Nielson, Ph.D.
Executive Director

DIVISION OF AIR QUALITY
Richard W. Sprott
Director

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

DAQ-025-5002

TO: Air Quality Board

THROUGH: Richard Sprott, Executive Secretary

THROUGH: Regg Olsen, Manager, Permitting Branch

FROM: Rusty Ruby, Manager, New Source Review Section

DATE: March 16, 2005

SUBJECT: Final Adoption: R307-210-1. Incorporation by Reference, 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS).

This update was proposed for public comment on January 5, 2005; a public hearing was held on February 16. No one came to the hearing and no written comments have been received.

Staff recommendation: Staff recommends the changes in R307-210 be adopted as proposed.

Environmental Quality, Air Quality
R307-210
Stationary Sources

NOTICE OF PROPOSED RULE
(Amendment)
DAR File No.: 27665
Filed: 01/20/2005, 11:29

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule incorporates federal standards by reference. The purpose of the amendments is to add to the Utah rule the amendments in standards that have been made in the federal rule since 1998.

SUMMARY OF THE RULE OR CHANGE: Amendments in standards have been made in the federal New Source Performance Standards, 40 CFR Part 60, since Utah last incorporated the standards by reference into Rule R307-210; the amendment incorporates the revised federal standards through July 8,

2004, into this rule. The federal rules already apply to the sources; incorporating them into the state rule allows the Division of Air Quality to enforce the standards. Generally, the amendments give sources additional flexibility. Affected sources are: stationary gas turbines; bulk gasoline terminals and gasoline distribution facilities; volatile organic liquid storage vessels for which construction, reconstruction or modification commenced after July 23, 1984; large municipal waste combustors for which construction commenced after September 20, 1994, or for which modification or reconstruction is commenced after June 19, 1996; synthetic organic chemical manufacturing industry; municipal solid waste landfills; and industrial-commercial-institutional steam generating units. The Division of Air Quality is not aware of any large municipal waste combustors or synthetic organic chemical manufacturers operating in Utah.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(a) and Section 19-2-108

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 60, effective 07/01/2004 and 64 FR 41346 (07/08/2004)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no change in cost to the state budget, as the sources affected by the amended federal standards already are included in state rules, and thus already are subject to inspection and compliance review.

◆ **LOCAL GOVERNMENTS:** How many of the affected sources are operated by local governments is not known precisely. Since the new standards either allow more flexibility or reduce reporting requirements, there is likely to be some small savings to local governments that operate affected sources.

◆ **OTHER PERSONS:** All of the federal amendments give additional flexibility to sources or reduce the recordkeeping costs for sources, and none of the changes increase costs for Utah sources. Though specific savings cannot be identified, they are likely to be small. Costs for specific categories follow. **STATIONARY GAS TURBINES:** There are about a dozen sources in Utah, and the new federal amendments give more flexibility in testing and monitoring procedures, thus giving sources the opportunity to reduce costs and regulatory burdens. **BULK GASOLINE TERMINALS AND GASOLINE DISTRIBUTION FACILITIES:** The amendments give more clarity and flexibility in testing and recordkeeping, thus giving sources the opportunity to reduce costs. **VOLATILE ORGANIC LIQUID STORAGE VESSELS:** This amendment reduces the number of such vessels that are subject to the rule, thus saving costs for those sources. **LARGE MUNICIPAL WASTE COMBUSTORS** and **SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS:** There are none in Utah. **MUNICIPAL SOLID WASTE LANDFILLS:** The amendments are minor technical corrections that do not change the costs to sources. **INDUSTRIAL-COMMERCIAL-INSTITUTIONAL STEAM GENERATING UNITS:** The amendments correct previous errors in the federal requirements and reduce recordkeeping, thus saving money for sources.

COMPLIANCE COSTS FOR AFFECTED PERSONS: All of the federal amendments give additional flexibility to sources or reduce the recordkeeping costs for sources, and none of the changes increase costs for Utah sources. Though specific savings cannot be identified, they are likely to be small. Costs for specific categories follow. **STATIONARY GAS TURBINES:** There are about a dozen sources in Utah, and the new federal amendments give more flexibility in testing and monitoring procedures, thus giving sources the opportunity to reduce costs and regulatory burdens. **BULK GASOLINE TERMINALS AND GASOLINE DISTRIBUTION FACILITIES:** The amendments give more clarity and flexibility in testing and recordkeeping, thus giving sources the opportunity to reduce costs. **VOLATILE ORGANIC LIQUID STORAGE VESSELS:** This amendment reduces the number of such vessels that are subject to the rule, thus saving costs for those sources. **LARGE MUNICIPAL WASTE COMBUSTORS** and **SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS:** There are none in Utah. **MUNICIPAL SOLID WASTE LANDFILLS:** The amendments are minor technical corrections that do not change the costs to sources. **INDUSTRIAL-COMMERCIAL-INSTITUTIONAL STEAM GENERATING UNITS:** The amendments correct previous errors in the federal requirements and reduce recordkeeping, thus saving money for sources.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Generally, the federal amendments increase flexibility for sources and fine-tune existing requirements. Sources will see some opportunity for savings, and no increased costs are expected. Dr. Dianne R. Nielson

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/17/2005

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 2/16/2005 at 1:30 PM, DEQ Building, 168 N 1950 W, Room 201, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2005

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jan Miller at the above address, by phone at 801-536-4042, by FAX at 801-536-4099, or by Internet E-mail at janmiller@utah.gov

R307. Environmental Quality, Air Quality.

R307-210. Stationary Sources.

R307-210-1. Standards of Performance for New Stationary Sources (NSPS).

~~[The standards of performance for new stationary sources in 40 CFR 60 (1998), as amended by 63 FR 49442, 64 FR 7457, 64 FR 9257, and 64 FR 40105]~~ The provisions of 40 Code of Federal Regulations (CFR) Part 60, effective on July 1, 2004, and amended by 64 FR 41346 (July 8, 2004), are incorporated by reference into these rules with the exception that references in 40 CFR to "Administrator" shall mean "executive secretary" unless by federal law the authority referenced is specific to the Administrator and cannot be delegated.

**KEY: air pollution, stationary sources[*], new source review[*]
[1999]2005**

19-2-104

19-2-108

R 307-101-2



State of Utah

Department of
Environmental Quality

Dianne R. Nielson, Ph.D.
Executive Director

DIVISION OF AIR QUALITY
Richard W. Sprott
Director

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

DAQ-024-2005

TO: Air Quality Board

FROM: Jan Miller, Rules Coordinator

THROUGH: Rick Sprott, Executive Secretary

DATE: March 29, 2005

SUBJECT: Propose for Public Comment: Amend R307-101-2 to Update the Definition of Volatile Organic Compounds

Utah uses the federal definition of volatile organic compounds (VOCs). Occasionally, EPA revises the federal definition to remove compounds that have low reactivity and thus are expected to contribute little to formation of low-level ozone, and Utah has revised the state definition of VOCs to match.

On November 29, 2004, EPA published two notices in the Federal Register exempting five compounds from the VOC definition. They are:

- ◆ 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane, known as HFE-7000;
- ◆ 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2- hexane, known as HFE-7500, HFE-s702, T-7145, and L-15381;
- ◆ 1,1,1,2,3,3,3,-heptafluoropropane, known as HFC 227ea;
- ◆ methyl formate; and
- ◆ t-butyl acetate, known as TBAC or TBAC.

These compounds are used as refrigerants, fire suppressants, aerosol propellants, solvents, or blowing agents, and all may be used as alternatives to substances that deplete ozone in the upper atmosphere.

The Federal Register notice exempting TBAC added a new paragraph (5) to 40 CFR 51.100(s); it requires that TBAC emissions be reported in a separate category in emissions inventories, and that TBAC emissions be included in photochemical dispersion modeling. Staff does not believe that sources will be able to report TBAC separately, nor that its inclusion will make any difference in future modeling; other states agree. Therefore, paragraph (5) is not included in this rulemaking.

Staff recommendation: Staff recommends that the revision of Utah's definition of VOC be proposed for public comment.

Air Quality Board
2004

	May 4	May 11							
Stead Burwell									
Jerry D. Grover	Y	Y							
Nan Bunker		Y							
James R. Horrocks		Y							
Dianne R. Nielson	tele until 2:30	tele until 2:30							
Don Sorenson									
Wayne M. Samuelson	N	Y							
JoAnn B. Seghini	Y	Y							
Marcelle Shoop	Y	N							
Jeffrey K. Utley									
John M. Veranth	Y	Y							
Ernest E. Wessman	Y	Y							

(Nan Bunker (Ag), Don Sorenson (Fuels), and Stead Burwell (Public) assuming they will be approved by the Senate this week.

Stead Burwell sburwell@uuen.com 948 Shire cliff Road LLC at 84408 801-201-7879

Don Sorenson dsorenson@tso.com
Nan Bunker may4u2@frontier.net

File:wp\Air Quality\Air Quality Board meetings\Attendance\mes.doc

From: Kevin Knight
To: Sprott, Richard
Date: 4/13/2005 10:38:08 AM
Subject: Re: Contact Info on Stead Burwell

Rick,

Stead's # is 801-201-7879
e-mail: sburwell@uven.com
address: 948 Shirecliff Road
SLC, UT 84108

-Kevin

>>> Richard Sprott 4/13/2005 10:02 AM >>>

Kevin,

We'll need to send Stead materials for meetings and I'd like to give him a call to let him know our meeting schedule, etc. Could you send me his phone, email, address, etc. Thanks, Rick

Barbara Johnson - RE: Air Quality Board May Meeting Date

From: "Clyde & Nan" <Hay4u2@frontiernet.net>
To: "Richard Sprott" <rsprott@utah.gov>
Date: 4/19/2005 5:45 PM
Subject: RE: Air Quality Board May Meeting Date

Richard, May 11 looks fine to me. Thanks, Nan Bunker

From: Richard Sprott [mailto:rsprott@utah.gov]
Sent: Monday, April 18, 2005 1:33 PM
To: hay4u2@frontiernet.net; Jim@horrocks.com; wayne.samuelson@hsc.utah.edu; shoopm@kennecott.com; John.Veranth@m.cc.utah.edu; joanns@midvale.com; ernest.wessman@pacifcorp.com; Jerry Grover; DSorensen@tsocorp.com; Dianne Nielson; sburwell@uven.com
Subject: Air Quality Board May Meeting Date

I was asked at the April meeting to poll the board on the best date for a May meeting. The normal date is May 4. Two members indicated they would not be able to attend so we'd like to determine if May 11 would work any better. I will also be out of town on May 4. We would start at 1:30 in either case. Anticipated business is 1) Approval of Actions concerning appeals of IPP3 and Sevier Power permits (action), 2) Consideration of Kennecott Utah Copper permit changes (action), and 3) Update on PM10 Maintenance Plan issues (Info).

Would you please let me know as soon as you can on the date so we can notify all concerned? Thank you.
Rick

P.S. I have included the Governor's recent board nominees (Nan Bunker (Ag), Don Sorenson (Fuels), and Stead Burwell (Public)) assuming they will be approved by the Senate this week.

From: "Jim Horrocks" <Jim@horrocks.com>
To: <rsprot@utah.gov>
Date: 4/19/2005 2:00:01 PM
Subject: Re: Air Quality Board May Meeting Date

I would be available on May 11th

>>> "Richard Sprott" <rsprot@utah.gov> 4/18/05 1:33:22 PM >>>

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Barbara Johnson - Re: Air Quality Board May Meeting Date

From: Dianne Nielson
To: Sprott, Richard
Date: 4/18/2005 5:05 PM
Subject: Re: Air Quality Board May Meeting Date

4 - until 2 pm
 1 - conf call

Rick-

I will not be in town on 5/11 but I could dial in on a conference line.

On 5/4, I can be available until 2:00 pm in person; I can be available on a conference line (except for the time to go through airport security) until 3:10 pm.

Sorry this isn't much help. Dianne

>>> Richard Sprott 04/18/05 1:33 PM >>>

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Barbara Johnson - RE: Air Quality Board May Meeting Date

From: "JoAnn B. Seghini" <joanns@midvale.com>
To: "Barbara Johnson" <bdjohnson@utah.gov>
Date: 4/19/2005 4:04 PM
Subject: RE: Air Quality Board May Meeting Date

May 11th. I could attend on the 4th with no problems. **Either date, I will be there.** JoAnn Seghini

From: Barbara Johnson [mailto:bdjohnson@utah.gov]
Sent: Tuesday, April 19, 2005 9:48 AM
To: joanns@midvale.com
Subject: RE: Air Quality Board May Meeting Date

Do you mean May 4 or 11?

>>> "JoAnn B. Seghini" <joanns@midvale.com> 04/18/05 3:10 PM >>>

Dear Richard, I have another meeting at the same time but will miss the other meeting if this is the best date for the board. Joann Seghini

From: Richard Sprott [mailto:rsprott@utah.gov]
Sent: Monday, April 18, 2005 1:33 PM
To: hay4u2@frontiernet.net; Jim@horrocks.com; wayne.samuelson@hsc.utah.edu; shoopm@kennecott.com; John.Veranth@m.cc.utah.edu; joanns@midvale.com; ernest.wessman@pacificorp.com; Jerry Grover; DSorensen@tsocorp.com; Dianne Nielson; sburwell@uven.com
Subject: Air Quality Board May Meeting Date

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Barbara Johnson - RE: Air Quality Board May Meeting Date

From: "Shoop, Marcelle (KUCC)" <shoopm@kennecott.com>
To: "Richard Sprott" <rsprott@utah.gov>
Date: 4/19/2005 6:01 PM
Subject: RE: Air Quality Board May Meeting Date

4 yes
 1 no

Rick, sorry I arrived late last week and missed the discussion on dates for meetings. I am able to attend the May 4 meeting, but unable to attend the meeting if held on May 11. There would be a very small chance I could participate by phone on the 11th for a brief portion of the meeting – in particular if we need to make any decisions relative to the findings – but I need to check on time differences as I will be out of the country.

Marcelle Shoop

Director, Sustainable Development

Kennecott Utah Copper Corporation

P.O. Box 6001

Magna, Utah 84044-6001

PH: 801-569-7144

FX: 801-569-7179

email: shoopm@kennecott.com

From: Richard Sprott [mailto:rsprott@utah.gov]

Sent: Monday, April 18, 2005 1:33 PM

To: hay4u2@frontiernet.net; Jim@horrocks.com; wayne.samuelson@hsc.utah.edu; Shoop, Marcelle (KUCC); John.Veranth@m.cc.utah.edu; joanns@midvale.com; ernest.wessman@pacificorp.com; Jerry Grover; DSorensen@tsocorp.com; Dianne Nielson; sburwell@uven.com

Subject: Air Quality Board May Meeting Date

I was asked at the April meeting to poll the board on the best date for a May meeting. The normal date is May 4. Two members indicated they would not be able to attend so we'd like to determine if May 11 would work any better. I will also be out of town on May 4. We would start at 1:30 in either case. Anticipated business is 1) Approval of Actions concerning appeals of IPP3 and Sevier Power permits (action), 2) Consideration of Kennecott Utah Copper permit changes (action), and 3) Update on PM10 Maintenance Plan issues (Info).

From: John Veranth <John.Veranth@m.cc.utah.edu>
To: Richard Sprott <rsprott@utah.gov>
Date: 4/18/2005 4:13:53 PM
Subject: Re: Air Quality Board May Meeting Date

Either date works for me.

>
> I was asked at the April meeting to poll the board on the best
> date for a May meeting. The normal date is May 4. Two members
> indicated they would not be able to attend so we'd like to determine
> if May 11 would work any better. I will also be out of town on May
> 4. We would start at 1:30 in either case. Anticipated business is
> 1) Approval of Actions concerning appeals of IPP3 and Sevier Power
> permits (action), 2) Consideration of Kennecott Utah Copper permit
> changes (action), and 3) Update on PM10 Maintenance Plan issues
> (Info).
> Would you please let me know as soon as you can on the date so
> we can notify all concerned? Thank you. Rick
> P.S. I have included the Governor's recent board nominees (Nan
> Bunker (Ag), Don Sorenson (Fuels), and Stead Burwell (Public))
> assuming they will be approved by the Senate this week.

Barbara Johnson - RE: Air Quality Board May Meeting Date

From: "Wessman, Ernie" <Ernie.Wessman@PacifiCorp.com>
To: "Richard Sprott" <rsprott@utah.gov>
Date: 4/18/2005 1:57 PM
Subject: RE: Air Quality Board May Meeting Date
CC: "Jones-Woodbury, Sharra" <Sharra.Jones-Woodbury@PacifiCorp.com>

Rick,

Either date works about equally as well for me. I can attend on either May 4 or 11.

Best regards,

Ernie

From: Richard Sprott [mailto:rsprott@utah.gov]
Sent: Monday, April 18, 2005 1:33 PM
To: hay4u2@frontiernet.net; Jim@horrocks.com; wayne.samuelson@hsc.utah.edu; shoopm@kennecott.com; John.Veranth@m.cc.utah.edu; joanns@midvale.com; Wessman, Ernie; Jerry Grover; DSorensen@tsocorp.com; Dianne Nielson; sburwell@uven.com
Subject: Air Quality Board May Meeting Date

I was asked at the April meeting to poll the board on the best date for a May meeting. The normal date is May 4. Two members indicated they would not be able to attend so we'd like to determine if May 11 would work any better. I will also be out of town on May 4. We would start at 1:30 in either case. Anticipated business is 1) Approval of Actions concerning appeals of IPP3 and Sevier Power permits (action), 2) Consideration of Kennecott Utah Copper permit changes (action), and 3) Update on PM10 Maintenance Plan issues (Info).

Would you please let me know as soon as you can on the date so we can notify all concerned? Thank you.
 Rick

P.S. I have included the Governor's recent board nominees (Nan Bunker (Ag), Don Sorenson (Fuels), and Stead Burwell (Public)) assuming they will be approved by the Senate this week.

January 6, 2005

1 R307. Environmental Quality, Air Quality.

2 R307-101. General Requirements.

3 R307-101-2. Definitions.

4 ...

5
6 "Total Suspended Particulate (TSP)" means minute separate
7 particles of matter, collected by high volume sampler.

8 "Toxic Screening Level" means an ambient concentration of an
9 air contaminant equal to a threshold limit value - ceiling (TLV-
10 C) or threshold limit value -time weighted average (TLV-TWA)
11 divided by a safety factor.

12 "Trash" means solids not considered to be highly flammable
13 or explosive including, but not limited to clothing, rags,
14 leather, plastic, rubber, floor coverings, excelsior, tree
15 leaves, yard trimmings and other similar materials.

16 "Vertically Restricted Emissions Release" means the release
17 of an air contaminant through a stack or opening whose flow is
18 directed in a downward or horizontal direction due to the
19 alignment of the opening or a physical obstruction placed beyond
20 the opening, or at a height which is less than 1.3 times the
21 height of an adjacent building or structure, as measured from
22 ground level.

23 "Vertically Unrestricted Emissions Release" means the
24 release of an air contaminant through a stack or opening whose
25 flow is directed upward without any physical obstruction placed
26 beyond the opening, and at a height which is at least 1.3 times
27 the height of an adjacent building or structure, as measured from
28 ground level.

29 "Volatile Organic Compound (VOC)" as defined in 40 CFR
30 [~~Subsection~~ 51.100(s)(1), as ~~published on July 1,~~
31 ~~1998~~ effective on July 1, 2004, and amended on November 29, 2004,
32 by 69 FR 69290 and 69 FR 69298, is hereby adopted and
33 incorporated by reference.

34 "Waste" means all solid, liquid or gaseous material,
35 including, but not limited to, garbage, trash, household refuse,
36 construction or demolition debris, or other refuse including that
37 resulting from the prosecution of any business, trade or
38 industry.

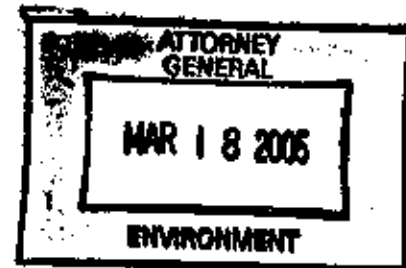
39 "Zero Drift" means the change in the instrument meter
40 readout over a stated period of time of normal continuous
41 operation when the VOC concentration at the time of measurement
42 is zero.

43
44 KEY: air pollution, definitions
45 [~~December 31, 2003~~]2005

46 Notice of Continuation June 5, 2003

19-2-104

APPEAL



MILLARD COUNTY ATTORNEY
LeRay G. Jackson - #01637
259 North Hwy. 6
P.O. Box 545
Delta, Utah 84624-0545

Attorney for the Millard County Commission

BEFORE THE UTAH AIR QUALITY BOARD

In Re: Approval Order – PSD Major
Modification to Add New Unit 3 at
Intermountain Power Generating Station,
Millard County, Utah
Project Code: N0327-010
DAQE-AN0327010-04

**REPLY MEMORANDUM IN SUPPORT
OF MILLARD COUNTY
COMMISSION'S STATEMENT OF
STANDING AND PETITION TO
INTERVENE**

The Millard County Commission, through its attorney of record, respectfully submits its Reply Memorandum in Support of Millard County Commission's (the "Commission") Statement of Standing and Petition to Intervene (the "Petition"). This Reply Memorandum responds both to papers filed by the Sierra Club and Grand Canyon Trust (collectively "Sierra Club") and the Utah Division of Air Quality ("DAQ") regarding the Petition.

INTRODUCTION

The Commission does not dispute that its Petition to Intervene in this matter is prompted by Sierra Club's Request for Agency Action, and not DAQ's Approval Order granting a Prevention of Significant Deterioration permit to Intermountain Power Service Corporation ("IPSC") to construct and operate an additional 950 MW coal-fired power plant unit ("IPP Unit 3"). Despite both DAQ and Sierra Club's arguments to the contrary, the Commission has stated

a claim for relief in its Petition as the Commission's interests will be affected by Sierra Club's Request for Agency Action. The Commission's Petition should be granted for several reasons. First and foremost, the Commission has complied with Utah Code Ann. §63-46b-9(1-2); second, the Commission has standing in this adjudicative proceeding as defined by the applicable Utah law; and third, the Commission is not precluded from intervening in this matter based on the doctrine of *parens patriae*.

ARGUMENT

I. THE COMMISSION'S PETITION FULLY COMPLIES WITH THE STATUTE AND REGULATIONS GOVERNING INTERVENTION.

"A Petition to Intervene shall meet the requirements of 63-46b-9." UTAH ADMIN. CODE R307-103-6(2)(a). Section 63-46b-9(1), Utah Code Annotated, specifically provides that "*[a]ny person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the agency.*" (*emphasis added*). Section 63-46b-9(2) goes on to state that a petition shall be granted if it is determined by the presiding officer that "(a) the *petitioner's legal interests may be substantially affected by the formal adjudicative proceeding*; and (b) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention." (*emphasis added*).

A. The Commission's Legal Interests, Particularly Its Tax Revenue, Will Be Affected By This Formal Adjudicative Proceeding.

The Commission seeks to intervene in Sierra Club's Request for Agency Action because interests particular to the Commission will be affected if Sierra Club's request is granted. IPP

Unit 3 will be constructed in Millard County. Millard County will be directly impacted by any increase in emissions and their effect, if any, on the health of its citizens and its environment. Likewise, Millard County will reap the benefits associated with the construction of IPP Unit 3, such as increased tax revenue, economic development, etc.

As stated in the Petition, the Commission carefully considered the evidence regarding the potential harms and benefits associated with constructing IPP Unit 3 in Millard County and concluded that all of the credible evidence indicated that IPP Unit 3 would be a positive addition to Millard County. See Petition, p. 4. In particular, the Commission determined that Millard County will benefit significantly from the additional tax revenue and jobs generated by IPP Unit 3. If Sierra Club's Request for Agency Action is granted, and Sierra Club ultimately prevails, the Commission will be injured by the loss of the economic benefits associated with IPP Unit 3, including the loss of tax revenue that would be generated by IPP Unit 3.

B. The Interests of Justice Will Be Served and the Proceeding Will Be More Efficient if the Commission is Allowed to Intervene At This Stage.

Allowing the Commission to intervene in Sierra Club's agency action will ensure that the interest of justice will be served and that all issues impacted by this proceeding will be efficiently and judiciously addressed in a single proceeding. Section 63-46b-9(2)(b) provides that the Commission may intervene if it does not delay or impair the administrative proceeding. The Commission's Petition will not delay the proceeding. To the contrary, the Commission's intervention ensures the prompt resolution of all interests impacted by Sierra Club's Request for Agency Action.

DAQ suggests that the Commission cannot intervene because it would unnecessarily complicate the proceeding and "delay or impair the administrative proceeding." Yet, if the Commission does not seek to intervene now, when could it do so? Is DAQ suggesting for the Commission to "wait and see" if the Board grants Sierra Club's requested relief, and then intervene after the Board's decision? If so, that suggested method would lead to delay and repetition.

To deny the Commission the opportunity to defend its interests in a proceeding directly affecting its interests, would be improper. It is only reasonable to allow the Commission to defend its interests during the course of a single administrative proceeding. To do otherwise could potentially result in this proceeding continuing indefinitely through various agency actions.

DAQ also suggests that it and IPSC can adequately defend the Approval Order and adequately represent the Commissions interests. Millard County disagrees. IPSC, DAQ, and the Commission, while having similar interests in some respects, do not share the same interests with respect to the construction of IPP Unit 3. The Commission and IPSC's interests are often at odds with one another with respect to many critical issues. The Commission wants to maximize tax revenue, jobs, and minimize the burden on County resources. DAQ seeks to enforce and uphold the air quality laws and regulations regardless of the effect on Millard County's economic development, tax base or governmental services. IPSC desires to economically construct and operate a new unit to produce more electricity. Consequently, the Commission cannot assume that its vital interests will be protected by IPSC or DAQ.

II. THE COMMISSION IS ADVERSE TO SIERRA CLUB IN ITS REQUEST FOR AGENCY ACTION.

Although both the DAQ and Sierra Club argue that the Commission can only intervene if it is adverse to the DAQ's Approval Order, they both fail to recognize that the Commission is adverse to Sierra Club's Request for Agency Action nothing more is required. The Sierra Club's Request for Agency Action will substantially affect the particularized interests of the Commission and the Commission is entitled to intervene.

Sierra Club and DAQ place substantial weight on their argument that the Commission's Petition must be dismissed because the Commission is not sufficiently adverse. This argument fails as the DAQ and the Sierra Club have failed to recognize that the Commission satisfies any adversity requirement that exists due to the fact that its interest are adverse to the Sierra Club's requested agency action. There is no requirement in section 63-46b-9, Utah Code Annotated, that requires the Commission be adverse to the DAQ Approval Order in order to intervene. The only requirements of section 63-46b-9 are that the Commissions interests be substantially affected by the adjudicative proceeding and that intervention will not impair or delay the proceeding as detailed above, requirements that the Commission completely satisfies. The adverseness requirement is derived, if at all, from Utah standing law discussed below.

III. THE COMMISSION HAS STANDING UNDER UTAH LAW.

The Utah Supreme Court has held that a party has standing if it can meet any one of the following:

1. The party seeking standing can establish some distinct and palpable injury that gives rise to a personal stake in the outcome of the dispute;
2. If the party seeking standing is the most appropriate party, and if the issue is unlikely to be raised at all if the party is denied standing; or
3. The party seeking standing presents issues that are unique and of such great public importance that they ought to be decided in furtherance of the public interest.

See The Sierra Club v. Department of Env'tl. Quality Div. of Solid and Hazardous Waste, 857 P.2d 982, 986-987 (Utah Ct. App. 1993) ("Sierra Club I") (citing National Parks and Conservation Ass'n v. Board of State Lands, 869 P.2d 909 (Utah 1993)).

A. The Commission Will Suffer a Distinct and Palpable Injury if Sierra Club's Request for Agency Action is Granted.

If the Sierra Club's Request for Agency Action is granted the Commission will suffer "a distinct and palpable injury" because the Commission will lose millions of dollars in tax revenue, employment opportunities, and further economic development that would be stimulated by IPP Unit 3. The nature of this injury is no different than the injury being asserted and relied upon by Sierra Club. Sierra Club is asserting injury to its members as a result of IPP Unit 3, an injury which has not occurred as IPP Unit 3 has yet to be constructed. Like the Sierra Club, the Commission has not yet been injured. However, if the Commission is denied intervention in the agency action and Sierra Club is ultimately successful, the Commission will suffer significant injury as a result of a proceeding that it was not allowed to participate in.

B. The Commission is the Most Appropriate Party to Protect and Defend the Interests of Millard County regarding IPP Unit 3.

As previously stated in the Commission's Petition, the Utah Court of Appeals has stated that a party seeking standing under this rule must be able to establish that they are "better suited to challenge these statutes," have a "more direct interest in the issues," face a "greater risk under the statutes," and have a "greater stake in the resolution of this issue."

The Court further clarified the most appropriate party in *Sierra Club I* by identifying persons and/or entities who the courts would consider to have a "direct interest in the issues," face "greater risk," and a "greater stake in resolution" of the matter. In that case the Court of Appeals denied the Sierra Club's petition to intervene finding it lacked standing under circumstances nearly identical to this action. Not only does that case defeat Sierra Club's own Petition to Intervene, but it also bolsters the Commission's own position. Upon denying the Sierra Club standing the court went on to state that most appropriate parties would be those with a greater interest in the dispute particularly "emergency response personnel, other persons working the area of the proposed CIF, owners of property near the site, or *public or private entities located in proximity to the site.*" *Sierra Club I*, 857 P.2d at 987 (*emphasis added*).

The Commission is just the type of entity the court envisioned in *Sierra Club I*. First, IPP Unit 3 is located in Millard County. The Commission is undoubtedly "in proximity to the site." Second, Millard County and its citizens have the greatest interest in IPP Unit 3 because they will directly benefit from its construction as a result of increased employment opportunities and additional tax revenue. Millard County and its citizens will also suffer directly from any

adverse impacts associated with IPP Unit 3. It is the citizens of Millard County neighboring IPP Unit 3 and the Commission who will suffer a decrease in property values, if any, as a result of their property's proximity to IPP Unit 3. It is the citizens of Millard County that will be directly impacted by the effect of IPP Unit 3's emissions on their health and environment. Millard County and its citizens face the greatest risk associated with IPP Unit 3, not Sierra Club members living in Arizona and Salt Lake County. The Commission properly represents its own interests, as well as those the Commission is authorized by statute to protect on behalf of its citizens.¹

Sierra Club in particular fails to understand *Sierra Club I*. This is evident by Sierra Clubs' argument that it has "never 'claim[ed] that it represent[s]' or 'protect[s] the interests of the citizens [of Millard County] before the Board.'" Sierra Club Opposition at 3. The Commission has never disputed that Sierra Club is acting on behalf of its members. What the Commission does dispute is Sierra Club's contention that they, as opposed to the Commission and the citizens of Millard County, are more directly impacted by IPP Unit 3 and have a greater interest or a greater stake in the outcome. The reasoning of the court in *Sierra Club I* was not conditioned on whether or not those parties identified, including the public entities in proximity to the site, elected to intervene. The reasoning of the court in *Sierra Club I* was simple, the

¹ The Commission identifies its statutory authority for intervention in this administrative proceeding regarding the interests of its citizens that it is charged with protecting in its Petition p. 5, and in this Reply Memorandum section III, *infra* p. 10.

public or private entities referred to were considered the most appropriate parties due to their proximity to the site in question. *See Sierra Club I*, 857 P.2d at 987.

Finally, as the Sierra Club and the DAQ have stated, Utah courts have identified a second part to the most appropriate party standard. To assert standing, a party must show that they are the most appropriate party and that the "issues are unlikely to be raised at all" if the party is denied standing. *See National Parks and Conservation Ass'n v. Board of State Lands*, 869 P.2d 909, 913 (Utah 1993). However, the second part of this test only comes into play if a party establishes the first part, i.e. that it is the most appropriate party. Since Sierra Club is not "the most appropriate party," the Board need not look to the second part of the test. Sierra Club and DAQ are trying to elevate the second part of the test over the first, essentially arguing that Sierra Club should be the most appropriate party because it is unlikely any one else will raise the issues. This analysis is wrong. Sierra Club cannot have standing under this test because it cannot establish, first and foremost, it is the most appropriate party. On the other hand, the Commission has shown that it is the most appropriate party and no one else will properly represent its interests.

C. Millard County's Petition to Intervene Is Based On Its Own Proprietary Interests, and Not That of Its Citizens, as well as Its Authority Provided by the Utah State Legislature.

Sierra Club contends that the Commission cannot seek to intervene because it is doing so on behalf of its citizens. Sierra Club is correct that *parens patriae* is a doctrine whereby the government brings an action on behalf of its citizens, and that this right generally does not

extend to counties. See Sierra Club Opposition Memorandum p.4. However, "political subdivisions such as cities and counties . . . [may] sue to vindicate such of their own proprietary interest as might be congruent with the interests of their inhabitants." *In re Multidistrict Vehicle Air Pollution v. Automobile Manufacturers Ass'n.*, 481 F.2d 122, 131 (9th Cir. 1973).

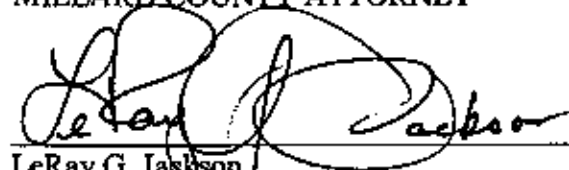
The Commission seeks to intervene based on its authority to "provide services, exercise powers, and perform functions that are reasonably related to the health, morals, and welfare" of its citizens. See Utah Code Ann. §17-50-302(1)(b). The Commission has determined that its economic interests and potential tax revenue are threatened by Sierra Club's Request for Agency Action. While these interests may be congruent with the interests of its citizens, the Commission does not seek to intervene on behalf of its citizens based on the doctrine of *parens patriae*, rather the Commission seeks to intervene based on its own interests as well as its statutory authority to protect the interests of its citizens.

CONCLUSION

Based on the foregoing, the Commission has complied with Utah Code Ann. § 63-46b-9, has established standing by identifying a "distinct and palpable injury," and that it is the "most appropriate party." Furthermore, the Commission is not relying on the doctrine of *parens patriae* for seeking to intervene, but its authority granted by the Utah State Legislature. Accordingly, the Commission's Statement of Standing and Petition to Intervene should be granted.

RESPECTFULLY SUBMITTED this 16th day of March, 2005.

MILLARD COUNTY ATTORNEY

A handwritten signature in cursive script, appearing to read "LeRay G. Jackson", written over a horizontal line.

LeRay G. Jackson
Attorney for the Millard County Commission

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 16th day of March, 2005, a true and correct copy of the foregoing **REPLY MEMORANDUM IN SUPPORT OF MILLARD COUNTY COMMISSION'S STATEMENT OF STANDING AND PETITION TO INTERVENE** was served by U.S. mail, postage prepaid, as follows:

E. Blaine Rawson
HOLME ROBERTS & OWEN, LLP
299 South Main Street, Suite 1800
Salt Lake City, Utah 84111-2263

✓ Richard K. Rathbun
Christian C. Stephens
Assistant Attorneys General
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Salt Lake City, Utah 84105

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Richard R. Hall
STOEL RIVES
201 South Main, Suite 1100
Salt Lake City, Utah 84111

Michael G. Jenkins
Assistant General Counsel
PacifiCorp
201 South Main, Suite 2200
Salt Lake City, Utah 84111

James O. Kennon, President
Sevier County Citizens for
Clean Air and Water
146 North Main Street, Suite 27
P.O. Box 182
Richfield, Utah 84701



UTAH AIR QUALITY BOARD MEETING

PLEASE PRINT

[illegible]

Memorandum

March 30, 2005

To: Utah Air Quality Board Members
Utah Attorney General's Office
Executive Secretary and Director, Division of Air Quality
PacifiCorp
Sevier Power
Western Resource Advocates
Sierra Club
Sevier County Citizens for Clean Air and Water
Attorneys representing the above parties

From: John M. Veranth
Chair, Utah Air Quality Board

Subject: Disclosure Re Citizen Appeals of Agency Actions on Sevier Power and Intermountain Power Project

As a board member and presiding officer for this matter the question has been raised as to whether I have any conflicts of interest regarding any of the parties or issues being considered. I do not believe that I have any financial or personal conflicts of interest that would prevent me from being fair and impartial in this manner.

I submit the following disclosure information as part of the record for inspection by all affected parties:

Contacts Regarding the Proposed Projects

On January 29, 2004 I attended an invited meeting at the office of Patrick Shea regarding Sevier Power. This meeting was attended by representatives of Sevier Power, Utah DAQ, local government, and environmental organizations.

I have not been a party to environmental group meetings or conference phone calls regarding either Sevier Power or Intermountain Power Project since that time. However, I have been copied on some of the public comments submitted by environmental groups regarding these projects.

In March 2004 I sent a letter to the editor of the Richfield newspaper. The text as submitted is appended below.

Environmental Organization Memberships

Organizations with member activities and programs

Sierra Club - Member since 1974, have never been a Sierra Club officer and I am not currently active on any Sierra Club committees. Prior to 2001, I was active with the Sierra Club Utah Chapter environmental health committee and the legislative committee. I do not regularly participate in Sierra Club outings (less than once / year).

Wasatch Mountain Club - Life Member. Former board member. WMC is not a party to this action.

Audubon Society - My wife is a member and participates in local activities. Audubon is not a party to this action.

I was an "environmental group representative" on the Western Regional Air Partnership Fire Emissions Joint Forum and am currently an "environmental group representative" on the WRAP Technical Oversight Committee. This is volunteer public service at open meetings.

Environmental Organization Donations

Organizations where my only involvement is making financial donations and getting newsletters.

Donations of \$50 - \$100 / year

Audubon
Earthjustice
Hawkwatch
League of Conservation Voters
Nature Conservancy
Save our Canyons
Trust for Public Lands
Union of Concerned Scientists
Utah Wilderness Coalition
Community Shares Utah

Donations of less than \$50 / year

Glen Canyon Institute
Grand Canyon Trust
Western Resource Advocates
Southern Utah Wilderness Alliance

Current Investments

I hold approximately 520 shares of stock in American Electric Power, a public utility that is not part of the proceedings. Other directly held stock Investments:

Abbot Laboratories
Albertsons
Apple Computer
Boeing Company

Citigroup
Coca Cola
Exxon Mobile
General Electric

Huntington Bancshares
Kronos
Microsoft
Nokia

Parker Drilling
Pfizer

Talbots
Wells Fargo

Wal-Mart
3M

Other equity investments are in the form of mutual funds.

PacifiCorp Customer

I have three customer accounts with PacifiCorp for my residence and for the common areas of two multi-unit residential buildings.

Research Funding and Collaborations

I am a Research Assistant Professor in the Department of Pharmacology and Toxicology at the University of Utah. Previously I was in the Department of Chemical and Fuels Engineering. My university research includes combustion and health effects of air pollution. I have received funding from U. S. Department of Energy, Office of Fossil Energy, U. S. Environmental Protection Agency, and Health Effects Institute for projects directly related to utility coal combustion research.

DOE -Department of Energy University Coal Research, Oxygen-enriched coal combustion with carbon dioxide recycle and recovery: simulation and experimental study, 2000, \$49,719, PI.

US Department of Energy, Technical strategies for managing problems with coal fly ash, 2001, \$71,873, U of U subcontract via Dr. Robert Hurt, Brown University.

US EPA, Health Effects of Airborne Particles, 2002, \$111,854, U of U subcontract from UC Davis.

Health Effects Institute, The Role of Bioavailable Iron in the Biological Effects of Inhaled Particles, 2002, \$49,850, U of U subcontract from Utah State University.

In 2004 I submitted an unsuccessful proposal to U. S. Department of Energy, Office of Fossil Energy titled "Toxicology of Primary Particles from a Power Plant Burning Western Coal" and I requested and received site access to the Huntington Power Plant and a letter of support from PacifiCorp that was submitted as part of this proposal.

I currently have a pending proposal to U. S. Department of Energy, Office of Fossil Energy, University Coal Research Program responding to their solicitation item "Characterizing Health-Relevant Fine Particle (PM2.5) Emissions from Coal-Fired Utility Boilers."

I anticipate applying for similar coal-related DOE and EPA funding in the future. I anticipate asking utility companies and equipment manufacturers for site access or for samples as needed to develop the proposals and conduct the research.

Publications Related to Utility Coal Combustion and Combustion Byproducts

Dust generator for inhalation studies with limited amounts of archived particulate matter. S. V. Teague, J. M. Veranth, A. E. Aust and K. E. Pinkerton, *Aerosol Science and Technology* 39(2) pp. 85-91, 2005.

Particle characteristics responsible for effects on human lung epithelial cells. A. E. Aust, J. C. Ball, A. Hu, J. S. Lighty, K. R. Smith, A. M. Straccia, J. M. Veranth and W. C. Young, Research Report 110, Health Effects Institute, Cambridge, MA 2002.

The effect of solid fuel type and combustion conditions on residual carbon properties and fly ash quality. Y. Gao, I. Kualots, X. Chen, E. M. Suuberg, R. H. Hurt and J. M. Veranth, *Proceedings of the Combustion Institute* V29 p 475-483, 2002.

Bioavailability of iron from coal fly ash: Mechanisms of mobilization and of biological effects. B. R. Ball, K. R. Smith, J. M. Veranth and A. E. Aust, *Inhalation Toxicology* 12 pp. 209-225, 2000.

Combustion Aerosols: Factors Governing Their Size and Composition, and the Implications to Human Health, J.S.Lighty, J.M. Veranth, A.F. Sarofim, Invited Critical Review, *Journal of the Air & Waste Management Association*, 50: 174-227, 2000.

Mössbauer Spectroscopy Indicates that Iron in an Aluminosilicate Glass Phase is the Source of the Bioavailable Iron from Coal Fly Ash, J.M. Veranth, K.R. Smith, F. Huggins, A.A. Hu, J.S. Lighty, A. E. Aust, *Chemical Research in Toxicology*, 13: 161-164, 2000.

Mobilization of iron from coal fly ash was dependent upon the particle size and the source of coal: Analysis of Rates and Mechanisms. J. M. Veranth, K. R. Smith, A. A. Hu, J.S. Lighty, A.E. Aust, *Chemical Research in Toxicology* 13: 382-389, 2000.

Interleukin-8 Levels in Human Lung Epithelial Cells Are Increased in Response to Coal Fly Ash and Vary With Bioavailability of Iron, as a Function of Particle Size and Source of Coal, Kevin R. Smith, John M. Veranth, Autumn A. Hu, JoAnn S. Lighty, and Ann E. Aust, *Chemical Research in Toxicology* 13: 118-125, 2000.

Measurement of Soot and Char in Pulverized Coal Fly Ash, J. M. Veranth, Thomas H. Fletcher, David W. Pershing, Adel F. Sarofim, *Fuel*, 79 p. 1067-1075, 2000.

Coal Fly Ash and Mineral Dust for Toxicology and Particle Characterization Studies: Equipment and Methods for PM2.5- and PM1-Enriched Samples, John M. Veranth; Kevin R. Smith; Ann E. Aust; Sara L. Dansie; James B. Griffin; Autumn A. Hu; Matthew L. Huggins; Jo Ann S. Lighty, *Aerosol Science and Technology*, 32:2, p. 127-141, 2000.

Mobilization of Iron from Coal Fly Ash Was Dependent on the Particle Size and the Source of Coal, K.R. Smith, J.M. Veranth, J.S. Lighty, A.E. Aust, *Chemical Research in Toxicology*, 11:12, p. 1494-1500, 1998.

Sources of Unburned Carbon in the Fly Ash Produced from Low-NO_x Pulverized Coal Combustion, J.M. Veranth, D.W. Pershing, A.F. Sarofim, J.E. Shield, 27th Symposium (International) on Combustion, p1737-1744, 1998.

March 21, 2004 Letter to the Editor of the Richfield Reaper
Power Plants and Clean Air

Power plants promise to bring high-paying jobs, increase the local tax base, and contribute to the state's economy. But, coal combustion releases health-damaging pollutants, and power plants are a major source of regional haze. Although the promised average wages are high, the best-paying jobs at a power plant require specialized training and will likely be filled by engineers and managers from outside the local area. The increased truck traffic, noise, and visual impacts will change the character of nearby agricultural and ranching areas.

The proposed Sigurd plant is controversial, as indicated by the recent hearing. The members of the Utah Air Quality board hear the concerns, but they have very limited discretion in this matter. The Air Quality Board is a citizen volunteer body that derives its rule-making authority from state and federal laws. During the permit application process the role of the Utah Division of Air Quality is only to determine if a project meets all the technical requirements called for in the current rules.

The decision of whether the power plant is good for your community is a political choice that properly belongs with your county commission, acting through the planning and zoning process. The power plant cannot be built without county approval, and I urge everyone attending the recent air quality hearing to express their concerns to the county as well.

The decision of whether the existing air quality rules are strict enough to protect your quality of life is a political choice that is made partly by the state legislature, but mainly by the federal government. I urge everyone concerned about air pollution from power plants to contact their elected representatives and express support for clean air.

The writer of this letter, John M. Veranth, is the representative of environmental groups on the Utah Air Quality Board. He is a registered professional engineer who has worked on the design and construction of power plants and other industrial facilities. He is currently a Research Assistant Professor at the University of Utah specializing in the health effects of air pollution.

Phone: 801-581-3789 Office, 801-971-0009 cell.
Home address: 4460 Ashford Drive, Salt Lake City, UT 84124

Sources of Information

This disclosure is a good-faith effort compiled from my investment account statements, donations listed on my income tax, the family check register, my professional notebooks, and the word processing files on my computer.

Draft
Utah Attorney General's Office
Memorandum

To: Utah Air Quality Board

From: Fred G Nelson, Legal Counsel to the Board



Re: Appeals of IPP Unit 3 and Sevier Power Company Approval Orders

Date: March 30, 2005

Attached, for your review, are the pleadings filed to date that bear on the issues to be decided at the Board's April 13, 2005, meeting. They are organized as follows:

a. Three petitions to intervene are presented in the IPP Unit 3 appeal, and three petitions to intervene are presented in the Sevier Power Company appeal.

b. For the IPP Unit 3 appeal, the Board is being asked to rule on whether to allow the intervention of:

1. Sierra Club and Grand Canyon Trust
2. Millard County Commission
3. Pacificorps

The attached IPP Unit 3 packet contains three sections with the pleadings for each of these petitions (see Index on cover sheet).

c. For the Sevier Power Company appeal, the Board is being asked to rule on whether to allow intervention of:

1. Sierra Club and Grand Canyon Trust
2. Sevier County Citizens for Clean Air and Water
3. Pacificorps

The attached Sevier Power Company packet contains three sections with the pleadings for each of these petitions (see Index on cover sheet).

As you will recognize when you read these materials, many of the issues are the same in both appeals. You should carefully review the materials prior to the Board meeting. My recommendation for handling these motions at the Board meeting is to allow each of the participants to make a summary oral argument, each for 10 minutes total. The assumption is that the Board has reviewed the written materials and that extended oral argument is not necessary. Because it is normal procedure to have the participant presenting the petition go first, I recommend the ten minute presentations be done in the following order:

1. Sierra Club and Grand Canyon Trust
2. Sevier County Citizens for Clean Air and Water

3. Millard County Commission
4. Pacificorps
5. Intermountain Power Project
6. Sevier Power Company
7. Executive Secretary

The Board members may then ask questions as they determine necessary, discuss, and rule on the six petitions to intervene.

If you have any questions, please give me a call (801-366-0285).

INFORMATION ITEMS

COMPLIANCE



State of Utah

Department of
Environmental Quality

Dianne R. Nielson, Ph.D.
Executive Director

DIVISION OF AIR QUALITY
Richard W. Sprott
Director

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

DAQC-394-2005

MEMORANDUM

TO: Air Quality Board
FROM: Richard W. Sprott, Executive Secretary
DATE: March 10, 2005
SUBJECT: Compliance Activities – February 2005

Annual Inspections Conducted:

A.....11
SM.....10
B.....21

Initial Compliance Inspections Conducted:

A.....1
SM.....0
B.....0

On-Site stack test audits conducted:.....2
Stack test report reviews:.....7

On-site CEM audits conducted:.....2
Emission reports reviewed:.....0

Oxy fuels inspections conducted:.....0

¹Miscellaneous inspections conducted.....31

HAPS



State of Utah

Department of
Environmental Quality

Dianne R. Nielson, Ph.D.
Executive Director

DIVISION OF AIR QUALITY
Richard W. Sprott
Director

ION M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

MEMORANDUM

TO: Utah Air Quality Board DAQH-0228-05
FROM: Richard W. Sprott, Executive Secretary
DATE: March 14, 2005
SUBJECT: Hazardous Air Pollutant Section Compliance Activities – February 2005

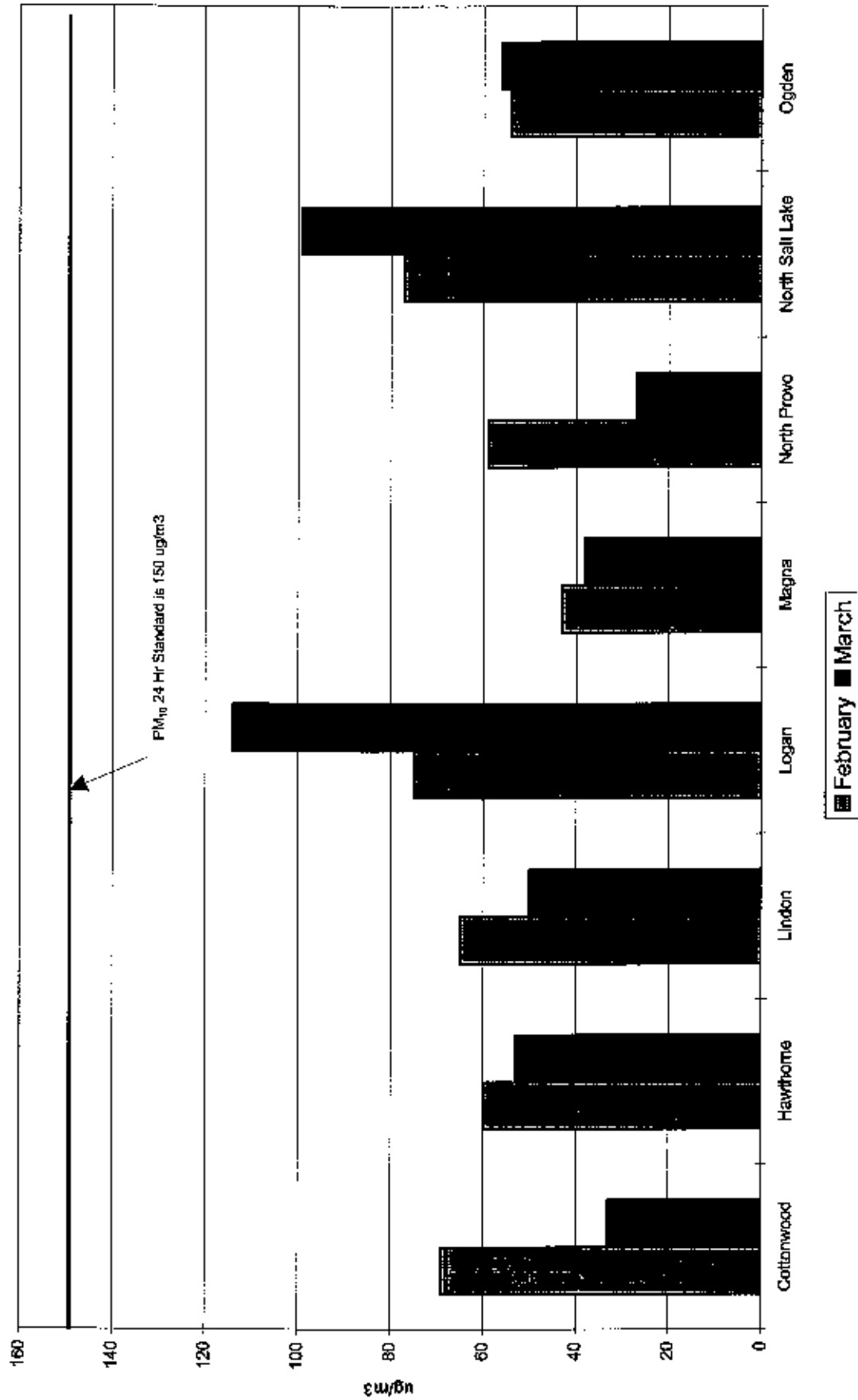
2/05

Asbestos Demolition/Renovation Inspections	2
Asbestos in School Inspections	3
MACT Compliance Inspections	2
Other NESHAP Inspections	0
State Rules (Only) Inspections	0
Asbestos Notifications Accepted	71
Asbestos Phone Calls Answered	317
Asbestos Individuals Certifications: Approved/Disapproved	28/0
Company Certifications/Re-certifications	0/5
Alternate Asbestos Work Practices: Approved/Disapproved	3/0
 Lead Based Paint (LBP) Inspections	 2
LBP Notifications Approved	0

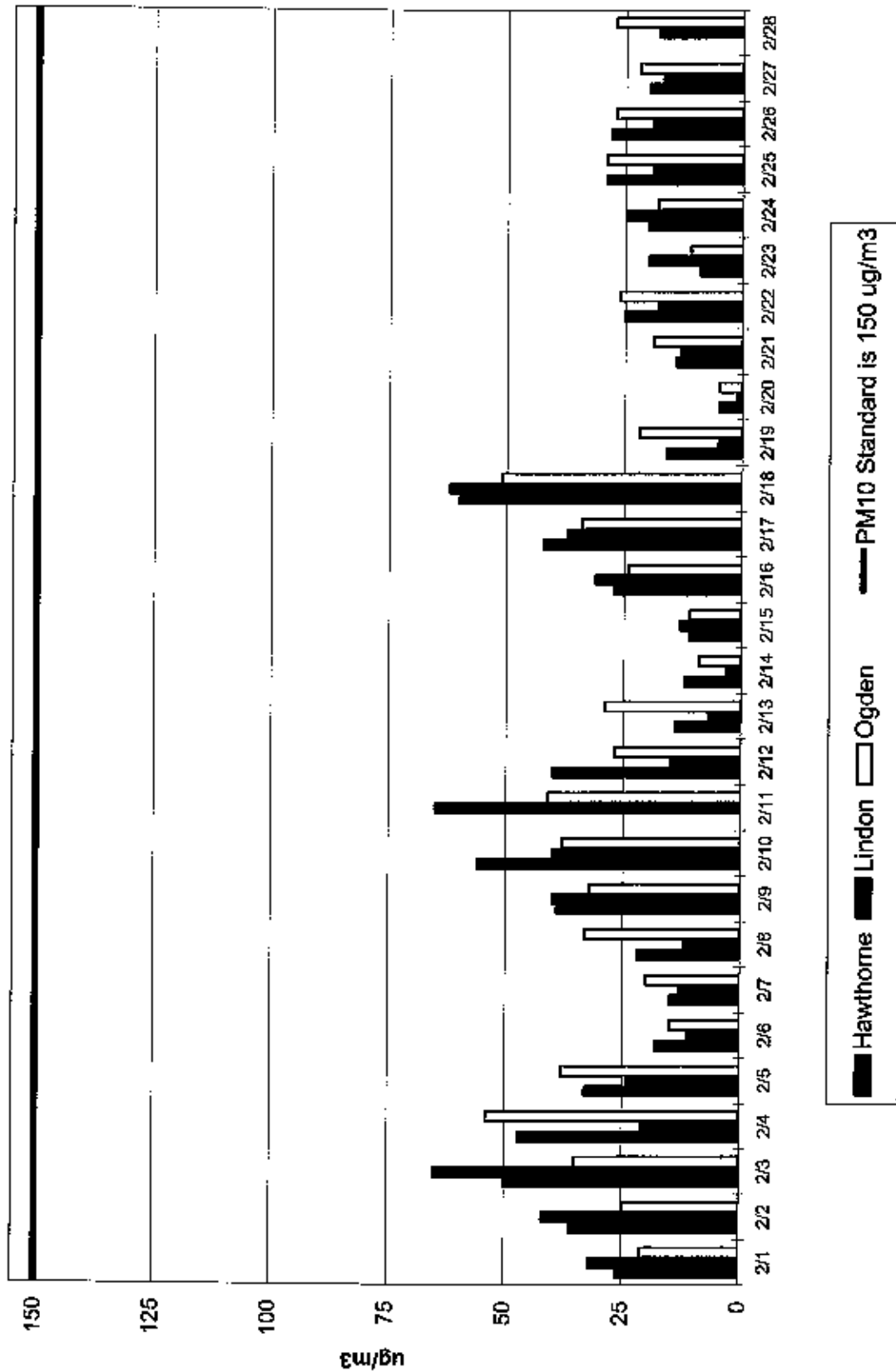
MONITORING

Highest PM₁₀ Concentration for February-March 2005

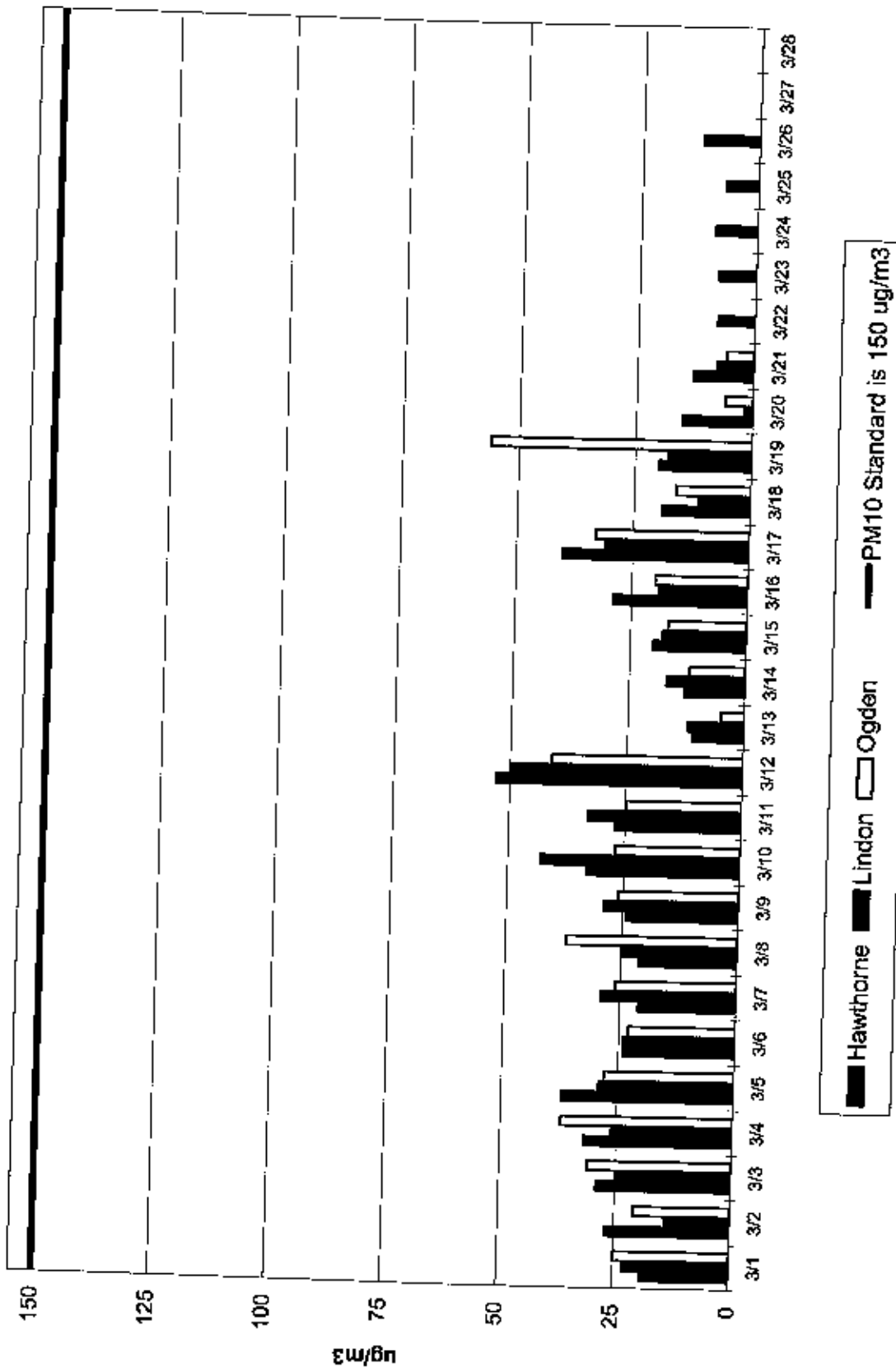
PM₁₀ 24 hour Standard is 150 ug/m³



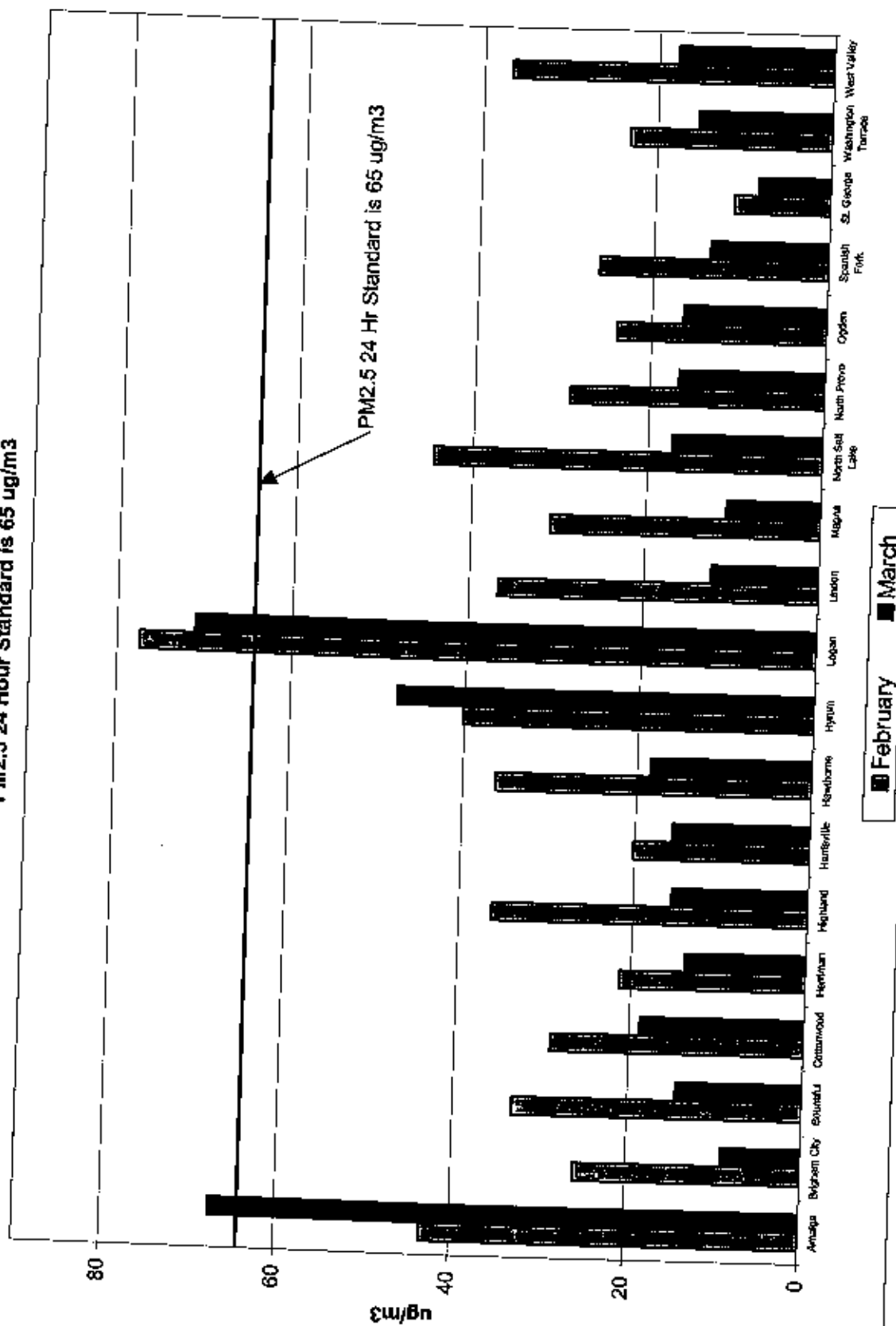
PM₁₀ Filter at Hawthorne, Linton, & Ogden **February 2005**



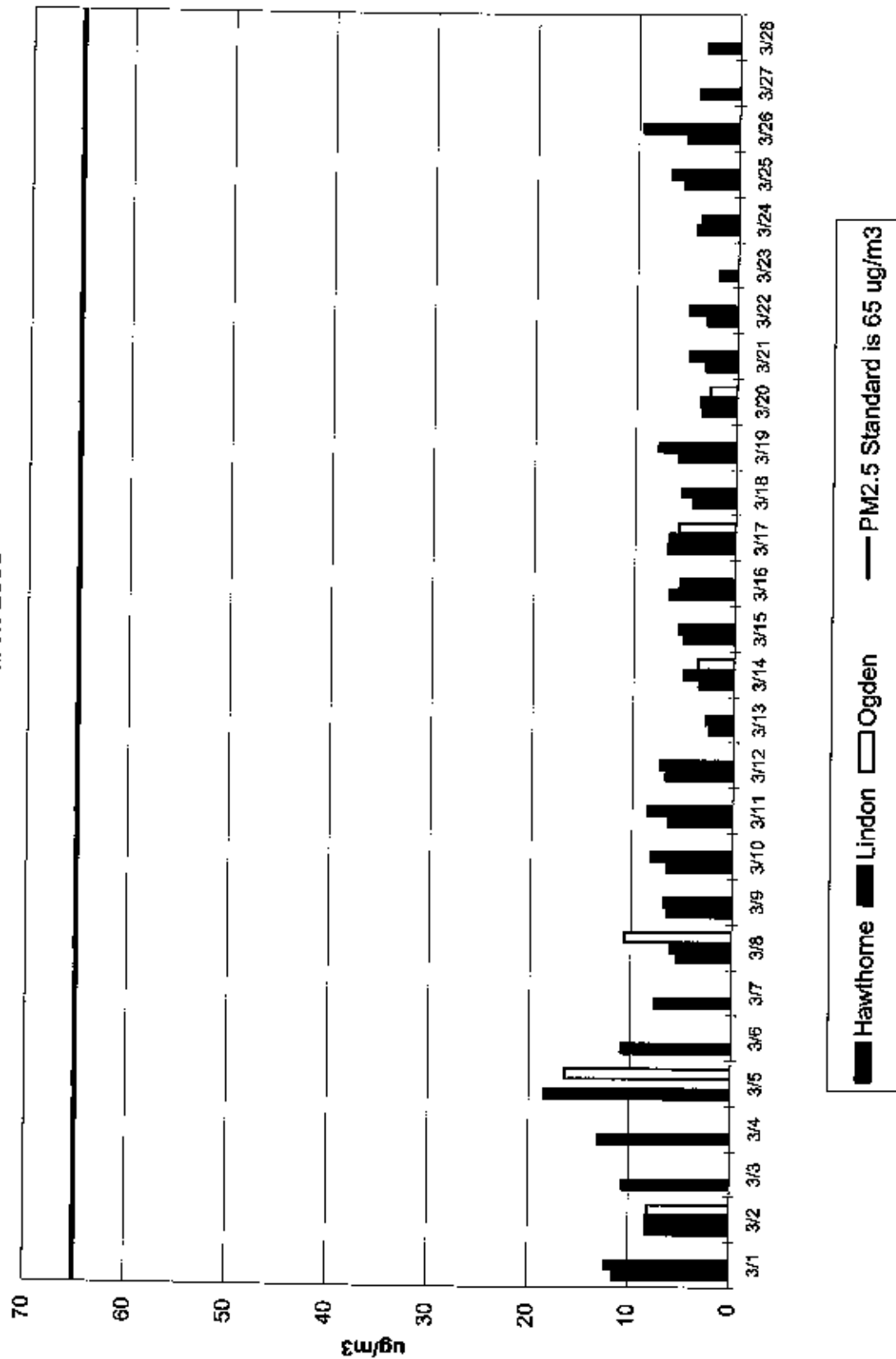
PM₁₀ Filter at Hawthorne, Linton, & Ogden March 2005



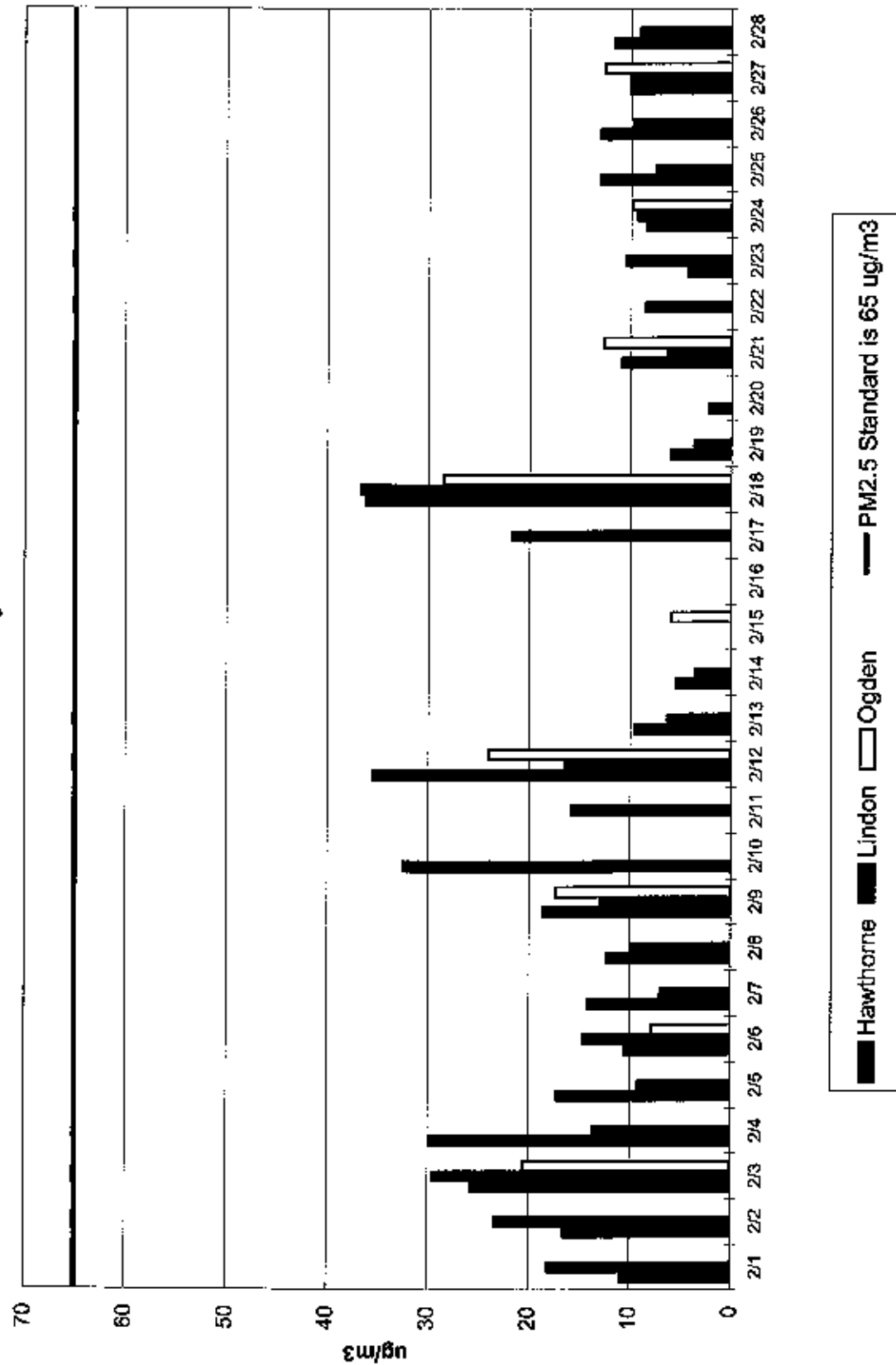
PM2.5 24 Hour Standard is 65 $\mu\text{g}/\text{m}^3$



PM_{2.5} Filter at Hawthorne, Lindon, & Ogden March 2005



PM_{2.5} Filter at Hawthorne, Lindon, & Ogden February 2005



UTAH STATE DIVISION OF AIR QUALITY

47mm Partisol: PM10 Concentration Adjusted to Sea Level (24-hr average) in Micrograms per Cubic Meter

2005 March

Date	Cottonwood	Hawthorn	London	Logan 4	Magna(W)	Moab	NProvo	NProvo-X	NSL	NSL-X	Ogden2
03/01		19	23						34		25
03/02	20	27	14	46	23		20		53		21
03/03		29	25						50		31
03/04		32	26						52		37
03/05	29	37	29	32	19		27	27	31	34	28
03/06		24	24						37		23
03/07		21	29						43		26
03/08	12	21	25	114	17		25		70		37
03/09		24	29						50		26
03/10		33	43						81		27
03/11	22	27	33	77	16		26	25	56	59	25
03/12		53	50						95		41
03/13		11	12						11		5
03/14	16	13	17	16	10		15		47		12
03/15		20	18						27		17
03/16		29	19						36		20
03/17	33	40	31		39		27	28	99	102	33
03/18		19	11						22		16
03/19		20	18						24		56
03/20	8	15	2		13		5				6
03/21		13	8						24		6
03/22			8						21		
03/23			8		12		0	1	17	16	
03/24			9						15		
03/25			7						17		
03/26			12		14		12		14		
03/27									13		
03/28											
03/29											
03/30											
03/31											
Arith. Mean	21	25	20	57	18		17	20	40	53	25
Max 24-hr Avg	33	53	50	114	38		27	28	99	102	56
Std. Dev	8	10	12	39	8		10	13	25	37	12
Days of Data	7	21	27	5	9		9	4	26	4	21
Days >150											
Yearly Avg	29	26	26	27	21		21	22	40	46	25

UTAH STATE DIVISION OF AIR QUALITY

47mm Partisol: PM10 Concentration Adjusted to Sea Level (24-hr average) in Micrograms per Cubic Meter

2005 February

Date	Cottonwood	Hawthorn	London	Logan 4	Magna(W)	Moab	NProvo	NProvo-X	NSL	NSL-X	Ogden2
02/01		26	32						24		21
02/02		36	42						34		25
02/03	41	50	65	52	32		44	46	49	54	35
02/04		47	21						77		54
02/05		33	24						38		38
02/06	17	18	11	23	9		22		19		15
02/07		15	13						18		20
02/08		22	12						31		33
02/09	35	39	40	46	25		22	21	55	60	32
02/10		56	40						70		38
02/11			65						72		41
02/12	38	40	15	55	29		17		34		27
02/13		14	7								29
02/14		12	3						14		9
02/15	15	11	13	14	12		10	9	16	17	11
02/16		27	31						27		24
02/17		42	37						50		34
02/18	69	60	62	75	43		59		61		51
02/19		16	5						23		22
02/20		5	1						13		5
02/21	15	14	13	30			9	7	24	28	19
02/22		25	18						47		26
02/23		9	20						52		11
02/24	22	20	25	68	21		19		59		18
02/25		29	19						56		29
02/26		28	19						51		27
02/27	20	20	17	69	20		17	15	39	39	22
02/28			18						64		27
Arith Mean	30	27	25	48	24		24	20	41	39	26
Max 24-hr Avg	69	60	65	75	43		59	46	77	60	54
Std. Dev	18	15	18	22	11		16	16	19	18	12
Days of Data	9	26	28	9	8		9	5	27	5	28
Days >150											
Yearly Avg	29	26	26	27	21		21	22	40	46	25

UTAH STATE DIVISION OF AIR QUALITY

PM2.5 Actual Concentration (24-hr average) in Micrograms per Cubic Meter

2005 March

Date	AG	BR	BV	CW	HE	HG	HV	HW	HY	LA	X4	UN	LX	MG	N2	NP	O2	SF	SW	WT	WX	WV	VX
03/01								11.5		54.6	54.3	12.3			12.2								
03/02		5.4	7.4	7.4	4.8	5.3	9.0	8.3		36.7	35.7	8.3		7.7	12.6	8.5	8.1	3.9		6.5		7.4	
03/03								10.6			50.0				14.2								
03/04								13.1		68.5	67.8				17.2								
03/05		9.1	14.5	18.8	13.8	15.6	15.8	18.5		34.5	34.2		18.0	10.8	17.1	16.7	16.4	13.5	4.5	15.3	15.6	17.8	18.4
03/06								10.9		34.9	34.2				15.2								
03/07								7.6		49.8	48.5				13.0								
03/08	61.7	4.9	4.1	6.7	3.5	5.4	5.0	5.5	47.8	71.1	70.5	6.1			14.5	6.4	10.6	5.7	7.3	5.2		8.2	
03/09								6.5			61.6	6.8			10.8								
03/10								6.5		62.8		8.1			16.9								
03/11	67.6	5.0	4.4	7.1	5.9	5.0	6.9	6.4		44.6		8.5	7.4	4.9	13.4	8.1		8.3	8.2	11.3	8.3	7.2	7.2
03/12								6.7		27.6	26.7	7.3			12.6								
03/13								2.4		3.9	3.1	2.8			3.2								
03/14	3.6	2.0	4.6	4.0	2.9	3.8	2.7	3.5	0.6	5.1	4.8	5.0		2.4	7.8	5.5	3.6	3.9	5.7	4.0		4.6	
03/15								5.0		7.8	7.7	5.5			8.3								
03/16								6.5		5.8	5.7	5.5			7.9								
03/17	3.4	5.4	7.0	6.0	6.3	6.1	6.5	6.7	3.6	4.4	4.6	6.5	6.8	5.7	11.8	6.7	5.6	5.2		7.6	7.3	7.1	6.6
03/18								4.3		7.6	7.2	5.4			7.4								
03/19								5.7		9.3	8.8	7.7			8.2								
03/20	1.6	2.0	2.1	3.7	2.5	2.9	2.8	3.4	0.5	2.0	2.1	3.6		2.5	3.5	2.8	2.7	1.9		2.5		3.8	
03/21								3.1		2.9	2.9	4.7			4.9								
03/22								3.0			3.9	4.8			7.2								
03/23		1.4	1.4	1.8	1.2	1.8	1.3	1.8	2.9				2.0	1.2	3.6	2.0	1.8	1.3		1.5	1.7	2.4	2.3
03/24								4.1			2.7	3.6			6.9								
03/25								5.4		4.4	4.4	6.7			5.4								
03/26		3.7	3.1	6.7	5.8	6.4	3.4	5.1	4.7	5.7	5.0	9.5		4.5	7.1	8.8	7.8	7.8		5.1		6.6	
03/27								4.0		5.3	5.0				5.8								
03/28								3.2		2.9	2.8	3.1											
03/29		2.4		3.6	2.8		3.4		1.5	3.4	3.2	4.7	4.3			4.1	3.6	3.3		1.4	2.4		
03/30																							
03/31										3.8	4.3	10.5											

Arith Mean	27.6	4.1	5.6	6.6	4.9	5.8	5.7	6.4	8.8	22.3	20.8	5.9	7.7	5.0	10.0	7.0	6.0	5.5	6.4	6.1	7.1	7.2	8.6
Max 24-hr Avg	67.6	9.1	14.5	18.8	13.8	15.6	15.8	18.5	47.8	71.1	70.5	12.3	18.0	10.8	17.2	16.7	16.4	13.5	8.2	15.3	15.6	17.8	18.4
Std.Dev	33.9	2.3	3.9	4.7	3.6	4.0	4.3	3.7	17.3	23.7	23.4	2.7	6.1	3.1	4.4	4.1	4.8	3.6	1.7	4.4	5.6	4.4	6.9
Days Data	5	10	9	10	10	9	10	28	7	25	27	26	5	8	27	10	10	10	4.0	10	5	9	4
Yearly Mean	25.5	8.4	11.2	11.9	8.7	8.8	9.5	12.0	18.2	14.0	12.4	10.5	9.7	9.5	16.0	9.9	11.0	8.1	7.6	9.6	12.0	11.9	11.0

UTAH STATE DIVISION OF AIR QUALITY

PM2.5 Actual Concentration (24-hr average) In Micrograms per Cubic Meter

2005 February

Date	AG	BR	BV	CW	HE	HG	HV	HW	HY	L4	X4	LN	LX	MG	N2	NP	O2	SF	SW	WT	WX	WV	VX
02/01								10.9			22.6	18.1			11.0								
02/02								16.5		25.9	25.8	23.4			18.5								
02/03	33.2	21.2	23.5	29.0	21.3	29.6	20.2	25.7	30.9	40.9	40.7	29.5	30.3	18.1		29.1	20.6	26.2	11.0	23.1	17.4	24.3	24.6
02/04								29.9			60.4	13.7			40.8								
02/05								17.2			77.4	9.2											
02/06	26.2	6.7	10.1	11.8	10.1	12.8	7.1	10.5	11.9		17.5	14.6		6.0		13.8	7.8	12.6	9.0	6.6		10.2	
02/07								14.1			26.1	7.0											
02/08								12.3			24.8	9.9											
02/09	40.8	11.9	14.2	2.9	12.5	9.7	19.6	18.5	18.9		32.4	12.9	12.6	14.1	5.4	11.6	17.4	9.0	8.1	14.7	15.2	21.2	21.5
02/10								32.5			42.9				37.5								
02/11											48.7	15.8			44.5								
02/12	43.4	21.0	23.6	28.0	16.7	9.2	18.5	35.5	40.2		48.4	16.5		26.4	29.0	16.3	24.0	12.2	5.9	19.9		23.4	
02/13								9.5		25.6	24.5	6.3			13.9								
02/14								5.5			6.2	3.5			7.0								
02/15		3.3	4.2	7.3	5.6	4.6	4.1		5.2		9.7		7.6	4.9	5.3	7.8	5.9	5.8	7.1	5.1	5.2	5.7	5.8
02/16										25.8	25.8				13.8								
02/17										44.2	43.1	21.8			27.1								
02/18		26.0	33.2	35.7	39.7	36.2	25.8	36.2	39.4	57.0	55.7	36.7		30.9	37.2	41.5	28.5	44.0	3.5	26.5		36.0	
02/19								6.0		39.2	36.7	3.7			8.7								
02/20								2.3		11.3	11.0				4.7								
02/21	18.0		6.5	5.4	2.0	2.9	11.4	10.9		22.9	22.9	6.4	6.1	3.9	8.7	5.5	12.7	2.7	3.7	10.9	11.0	5.6	12.5
02/22										28.8	28.5	8.5			18.8								
02/23								4.3		35.2	35.3	10.5			16.1								
02/24	44.1	7.1	9.3	3.2	8.1	7.4	8.8	8.5	29.4	48.4	44.7	9.3		8.2	15.4	7.4	9.9	6.2	6.4	8.6		12.3	
02/25								13.0		45.6	44.8	7.5			19.4								
02/26								13.0		53.5	52.7	9.7			19.7								
02/27	50.4	20.2	9.2	12.5	8.2	7.0	13.6	10.1	44.0	56.7	55.5	10.2	10.5	9.3	14.5	10.1	12.6	6.3	4.3	11.9	12.2	12.5	
02/28								11.7		55.1	54.3	9.2			15.6								

Arith Mean	36.7	14.7	14.9	15.1	13.8	13.3	14.3	15.0	27.5	36.5	36.4	13.1	13.4	13.5	18.8	15.9	15.5	13.9	6.6	14.1	12.2	17.6	14.1
Max 24-hr Avg	50.4	26.0	33.2	35.7	39.7	36.2	25.8	36.2	44.0	57.0	77.4	36.7	30.3	30.9	44.5	41.5	28.5	44.0	11.0	26.5	17.4	36.8	24.6
Std Dev	11.2	8.4	9.7	12.5	11.3	11.6	7.1	9.9	14.2	14.0	17.0	8.1	9.8	9.7	11.8	11.9	7.7	13.2	2.5	7.5	4.6	10.9	8.7
Days Data	7	8	9	9	9	9	9	24	8	16	18	24	5	9	23	9	9	9	9.0	9	5	9	5
Yearly Mean	25.0	8.9	11.7	12.5	9.1	9.1	9.9	12.7	21.2	13.1	11.5	10.9	9.9	9.8	17.3	10.2	11.5	8.4	7.6	9.9	10.3	12.3	11.2